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**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY  
DONALD JAY BEARDSLEE**

**JANUARY 10, 2005**

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**VOLUME 4**

**MICHAEL LAURENCE, BAR NO. 121854  
SUSAN GARVEY, BAR NO. 187572  
HABEAS CORPUS RESOURCE CENTER  
50 Fremont Street, Suite 1800  
San Francisco, California 94105  
Telephone: 415-348-3800  
Facsimile: 415-348-3873**

**Attorneys for DONALD JAY BEARDSLEE**

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Attorneys for DONALD JAY BEARDSLEE

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**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 54: Declaration of Robert Martinez**

## DECLARATION OF ROBERT MARTINEZ

I, Robert Martinez, declare as follows:

1. I served as a juror in the 1983 case of Donald Beardslee in San Mateo, California. Before we were called to serve, a separate jury decided that Mr. Beardslee was guilty and that he was eligible for the death penalty. I was on the jury that decided whether or not to give Mr. Beardslee the death penalty.

2. During much of our deliberations we were split ten votes to two for life without the possibility of parole for both murder counts. I did not think that Mr. Beardslee deserved to die because he did not get the help that he so clearly needed and wanted for his mental problems. During the penalty trial we learned that there were times when Mr. Beardslee was supposed to get treatment for his mental problems, but then never did. It bothered me that he was never treated for whatever mental illnesses he had.

3. The jury went around and around for several days in the deliberation process. Some of the jurors were like me and talked a lot about Mr. Beardslee's mental problems and how that should affect the sentence we chose. Others were more concerned about the details of the crimes. They talked about the cold and callous nature of the crimes and were bothered by the fact that Mr. Beardslee did not express remorse. These jurors talked more about evidence that Mr. Beardslee tried to cover up the crime in his apartment after one of the girls was first shot. Some jurors were afraid that Mr. Beardslee would hurt other people in the future. They thought that Mr. Beardslee might injure other inmates or guards if he were given life in prison.

4. One man on the jury was adamant about giving Mr. Beardslee the death penalty. He was a very good talker, and he went on and on about the crimes. He passed around gruesome and gory pictures of the victims to the other jurors over and over again. It seemed that he was

responsible for changing the minds of several of the jurors who were not sure what to think about all the evidence we had seen and heard.

5. The deliberations were very close up to the end. It was a tremendous struggle for the jury to come to a unanimous agreement. I was one of the last jurors to switch my vote from life without the possibility of parole for one of the crimes to death for Mr. Beardslee. In the end, I did this even though there was no difference to me between the two girls who had been killed, and I did not quite understand why people on the jury thought we should have two different sentences.

6. At the time of Mr. Beardslee's trial, the science and technology that we have now was not available. I knew something was not right with Mr. Beardslee, but I just did not know what it was. Information about Mr. Beardslee's brain damage would have been very important to whether the jury would have sentenced him to death. This kind of information would have made a difference to me, and it would have helped me to stay on the side of life without the possibility of parole for Mr. Beardslee. I also think it would have helped the other jurors who were struggling with the decision and would have made it more difficult for the man who was arguing for us to give Mr. Beardslee the death penalty to convince myself and the other nine jurors to change our vote from life to death.

7. I understand that recent evidence of Mr. Beardslee's brain damage has been presented to the Governor. I fully support further testing, including an MRI, for Mr. Beardslee to better understand his mental illness, and would support commuting Mr. Beardslee's death sentence because of this recent evidence.

8. I also ask Governor Schwarzenegger to have mercy on Mr. Beardslee's life and to grant him clemency. At the time of the sentencing, the jury almost sentenced Mr. Beardslee to life without the possibility of parole. If we had known about Mr. Beardslee's brain damage and

had over twenty years of his excellent record in prison, he would not have been sentenced to death. The fair and just action in his case is to commute his sentence.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States and the State of California on January 7, 2005.

  
\_\_\_\_\_  
ROBERT MARTINEZ

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 55: Declaration of Peter Meffert**

## DECLARATION OF PETER MEFFERT

I, Peter Meffert, declare as follows:

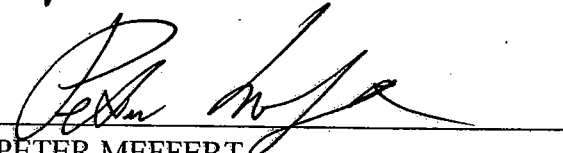
1. I served as a juror in the 1983 case of Donald Beardslee in San Mateo, California. A prior jury decided that Mr. Beardslee was guilty and decided that he was eligible for the death penalty. The jury that I was on was the second jury, which decided whether or not to give Mr. Beardslee the death penalty.

2. I was seated on the jury as an alternate, but one of the jurors was dismissed and I became a deliberating juror. I was present for all of the days of the deliberations.

3. Evidence about Mr. Beardslee's mental troubles was presented at the penalty trial, but medical science was not as advanced as it is now and we were not told of Mr. Beardslee's brain damage. If we had been presented with information about Mr. Beardslee's brain damage, the jurors would have been interested in learning about it and how it affected him. We would have considered it in our deliberations. At one point, the jury was split ten to two in favor of giving him life without the possibility of parole. Further information that explained how Mr. Beardslee's mental illness affected him would have been helpful to us. We talked about Mr. Beardslee's future dangerousness and we were worried about him hurting others if we let him live. The potential for him to cause harm to others was a factor for us when we decided to give him the death penalty for one of the victims.

4. I support further testing for Mr. Beardslee to better understand his brain damage. I would support an MRI for Mr. Beardslee to determine the severity of the brain damage that he has.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States and the State of California on January 14, 2005.

  
PETER MEFFERT

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 56: Declaration of Richard Jenson**

## DECLARATION OF RICHARD JENSON

I, Richard Jenson, declare as follows:

1. I was a juror in the penalty part of Donald Beardslee's 1983 trial. A prior jury had found Mr. Beardslee guilty of two murders and four special circumstances relating to counts of multiple murders and the killing of witnesses. Our jury was only to decide if Mr. Beardslee should receive the death penalty for his crimes or life without the possibility of parole.

2. After hearing all of the evidence against Mr. Beardslee, I believed our deliberations would be quick and easy. It seemed so obvious to me that based on all of the evidence about Mr. Beardslee's role in the cover-up of the initial accidental shooting and his subsequent actions, that he was a cold, calculating murderer that deserved the death penalty. But instead, the deliberations were really close. After the deliberations finally began, I told another juror that this was going to be fast and he agreed with me. Then after the deliberations began and we took a vote, I realized that we were at opposite ends of the voting spectrum. I was sure that Mr. Beardslee should be sentenced to death, and he was just as sure that he should be given life without the possibility of parole.

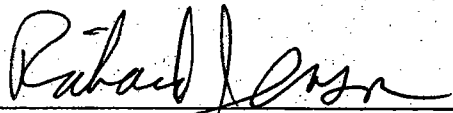
3. The jury was all over the map in voting. At times there were more jurors who wanted life without the possibility of parole, and at other times, there were more who wanted the death penalty. There was a lot of flip-flopping back and forth. Throughout the four or five days of deliberations, the members of the jury struggled with their decision about which sentence Mr. Beardslee should receive. I did not always understand what was going on with the other jurors. For me, the fact that Mr. Beardslee confessed and the fact that the prior jury had found already him guilty of all of the different special circumstances, made the decision to vote for death that much easier because there was never any lingering doubt about whether or not he was guilty of the crimes he was convicted of. The jury knew that Mr. Beardslee was on parole in California and was not allowed to be in possession of any firearms. His role in the accidental shooting of the first victim was going to send him back to prison. His motive for participating in the



subsequent deaths of the two victims was pretty clear, even though the defense tried to muddy the waters with information about the other people involved. Throughout the course of the various events, Mr. Beardslee was calculating ways to get out of his situation so as not to get caught. Still, grappling with the decision of life or death for Mr. Beardslee was one of the hardest things I have ever had to do.

4. I have been told that there is new information that reveals that Mr. Beardslee may have brain damage. I think that there are social benefits to having an MRI conducted on Mr. Beardslee's brain. If there is any way that our further understanding of this particular kind of brain damage can advance our knowledge and help prevent future violence and victims, I think that he should be given one. Even if the MRI would cause a delay in the execution date set for Mr. Beardslee, I would still support it.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States and the State of California on January 7, 2005.

  
\_\_\_\_\_  
RICHARD JENSON

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 57: Letter by Daniel B. Vasquez**

CORRECTIONS CONSULTING & INVESTIGATIVE  
SERVICES

January 9, 2005

Governor Arnold Schwarzenegger  
Office of the Governor  
State Capitol  
Sacramento, CA 95814

Re: Clemency Petition for Donald J. Beardslee

Dear Governor Schwarzenegger:

I write to express my strong and unreserved support for clemency for Donald J. Beardslee. It is out of the utmost respect for the correctional system in California that I sincerely believe that clemency is appropriate in this rare case. I support capital punishment as a public policy and am committed to its fair and humane administration. During my ten years as Warden of San Quentin, I presided over the first two executions in California since the reinstitution of the death penalty in 1992. I firmly believe that it is an appropriate punishment and that the State of California has the right to enforce its criminal laws. It is only in extraordinarily rare cases that I believe clemency is appropriate. Because Mr. Beardslee has demonstrated exceptional adjustment to prison and has contributed to the safety of correctional officers, I believe that commutation of his death sentence is warranted.

Having devoted my entire thirty-six year professional career to the field of correctional science, I feel uniquely qualified to attest to the importance of institutional adjustment as a critical factor in deciding clemency. My career in the correctional field began in 1965 as a correctional officer with California Department of Corrections (CDC), while I attended college, and by 1983 I became Warden of San Quentin State Prison. I served as Warden there for ten years, from December 1983 until the end of 1993, after working my way up through the ranks for twenty-nine years with the CDC including positions as acting superintendent and warden of two state prisons. As Warden at San Quentin State Prison, I was responsible for the administration and operation of a prison with a yearly operating budget of over \$110,000,000 that employed over 1500 staff.

While Warden of San Quentin State Prison, I supervised the reactivation of the lethal gas chamber and was responsible for and carried out the executions of Robert Harris on April 21, 1992, and David Edwin Mason on August 24, 1993. Following Mr. Harris's execution, I was called upon by then Attorney General Daniel Lungren to study the procedures for execution by lethal injection to determine its feasibility as an alternative method of execution in California. To that end, I reviewed the lethal injection procedures in Texas and witnessed the execution of Justin Lee May in May of 1992.

Since leaving my position as Warden of San Quentin, I have continued to work in the field, including as Warden of Soledad, as Director of the Santa Clara County Department of

Corrections, and as a consultant to and the Warden of California City Correctional Center, a privately operated prison administered by Corrections Corporation of America, based in Nashville, Tennessee.

In my entire thirty-six years in the field, Mr. Beardslee's case is only the second in which I have written a letter in support of clemency for a condemned inmate. I do so only because Mr. Beardslee's is an atypical case in which a grant of clemency is truly and uniquely warranted.

MR. BEARDSLEE'S PRISON CONDUCT IS EXEMPLARY.

Mr. Beardslee has been a model prisoner during his twenty-plus years of incarceration at San Quentin. In no other case have I ever seen such a stark contradiction between what the prosecutor argued at trial – that Mr. Beardslee was so dangerous to the well being of prison staff that he should be put to death – and what has come to pass, which is that Mr. Beardslee has been a model inmate. Unquestionably, he has faithfully followed institutional rules and has been trusted by both jail and prison authorities, the very persons whom the prosecutor opined would be threatened by Mr. Beardslee if he was sentenced to life without the possibility of parole.

I reviewed Mr. Beardslee's entire CDC file, and I found not a single instance of adverse information concerning Mr. Beardslee. Rather, Mr. Beardslee has remained and is currently discipline free, presents no danger to the institutional staff or inmates, demonstrates cooperation with authorities, works diligently and competently for various correctional officers, and in all ways contributes to the over-all safety of correctional staff.

In my thirty-six years in this work, I have seen virtually no inmate CDC file that rivals Donald Beardslee's in its testament to his exemplary record and his positive contributions to the orderly running of San Quentin. Mr. Beardslee's excellent behavior promotes respect for authority and compliance with rules, ensures the orderly running of the institution, and contributes to the ongoing safety and security of inmates and correctional officers.

Mr. Beardslee's record as a model inmate contrasts markedly with the majority of death row prisoners. Unfortunately, it is impossible for staff to prevent every attempted rule violation, and inmates seeking opportunities to create havoc, engage in violence, and subvert the rules sadly are often able to do so despite the severe restrictions imposed under the death row conditions of confinement. Any warden of a correctional facility can speak to the creative and often tragic ways in which violence and criminal activity is perpetuated within the institution. In my ten years as warden of San Quentin, individuals on death row routinely, almost daily, violated the rules, from simple infractions warranting a write-up to more serious acts of life-threatening violence, in which case the inmates were downgraded to Grade B status, often permanently. At any given time, numerous death row inmates were classified as Grade B based on the infractions they committed. Against this backdrop, Mr. Beardslee's impeccable record stands out. Quite simply, it is impossible to fake such good behavior for so many years.

In addition to carefully reviewing Mr. Beardslee's CDC central file, I have also reviewed Mr. Beardslee's Missouri Department of Corrections records, his California Parole Records, and his San Mateo County Jail Records. These records astound me in the uniform picture they paint of Mr. Beardslee as a model prisoner. He poses no threat whatsoever to institutional safety. On the contrary, Mr. Beardslee is an asset to the institution.

Mr. Beardslee was granted Grade A status on March 23, 1984, approximately nine days after his arrival at San Quentin, a classification that he has maintained for over twenty years. Grade A is a high status level assigned to inmates that follow institutional regulations. Mr. Beardslee's attainment of Grade A status in such an extraordinarily short period of time – quicker than I have seen with any other death row inmate – likely is attributable to Mr. Beardslee's excellent adjustment in the San Mateo County Jail. Mr. Beardslee served three years in the San Mateo county jail without incident. Remarkably, although Mr. Beardslee was charged with capital murder, he was assigned to work in the county jail kitchen. While working there, he reported a missing kitchen knife to jail staff, thereby helping staff avert a possible assault or homicide.

In December 1984, Mr. Beardslee was accepted into the condemned work program, having met the rigorous requirements then in place, and remained in the program until a change in institutional policy terminated the program. I was at San Quentin during the time period that Mr. Beardslee and several other inmates were assigned to the condemned inmate work program. Very few death row inmates were accepted – only those in whom staff had complete trust and whom staff was absolutely certain posed no security threat. Mr. Beardslee was trustworthy enough to be accepted, took advantage of the opportunity, and did not disappoint.

Mr. Beardslee was assigned the duties of unit clerk for the custody staff of south block unit Donner, which housed security housing unit maximum inmates at that time. As clerk, Mr. Beardslee wrote reports and reviewed yard assignments. He regularly advised staff when an assignment error would cause a security problem for staff, inmates, and the institution. Mr. Beardslee's supervisor's reports comment that he "performed in an exemplary manner...he has an excellent attitude and is knowledgeable and cooperative." Deservedly, Mr. Beardslee consistently received laudatory commendations both for the quality of his work and the contributions he made to the orderly functioning of the institution. Mr. Beardslee demonstrated a rare and impeccable work ethic. One classification note is illustrative:

Since Inmate BEARDSLEE has been a worker in Donner Section, he has been working in the capacity of Clerk. From the start, he has learned the job very competently. Due to circumstances, he suddenly became the only Clerk in the Unit, and despite [sic] the heavy workload that was facing him, he managed to handle the job with a high degree of excellence. If there is something that needs to be done quickly, due to time constraints or such Inmate BEARDSLEE handles it with quick dispatch and if necessary, does take it back to his cell and work through his off duty hours. He voluntarily works on his regular days off, making sure that the yard list [sic] are ready and correct, and staying on top of any emergencies that occur (including packages, Memos, etc.). Inmate BEARDSLEE has been very much an asset to Donner Section.

It is readily apparent that Mr. Beardslee eagerly sought out work and accepted more responsibility than was required of him. More importantly, he did so to facilitate the efficient and safe operation of the institution. During June of 1985, the prison was on lockdown due to the investigation into the murder of Sergeant Hal Burchfield. Nonetheless, inmate Beardslee continued to provide clerical services to the Donner unit from his death row cell. The fact the Mr. Beardslee worked diligently, even when it was not required of him and despite the fact that he received no personal gain from doing so, speaks to his ability to thrive in a structured environment. It is rare and remarkable to see such a commitment to institutional safety and efficiency.

In 1991, Mr. Beardslee was assigned to, and has since remained in, the "North Seg" housing unit, which is an honor block reserved for the prisoners who have no gang affiliations or protective custody needs and who are deemed compliant, trustworthy, and well-behaved. He has remained there ever since. He was also assigned to an "integrated yard" for exercising which means he is not "gang-affiliated" nor does he have any problems with any other condemned inmates.

Throughout his CDC file, prison staff routinely characterize Mr. Beardslee as "cooperative and friendly" with both correctional personnel and other inmates, again signifying the positive contributions he makes to the orderly running of San Quentin State Prison. It is also uncommon to see inmates complimented repeatedly for their positive attitude, such that when it occurs, as it does in Mr. Beardslee's CDC file, it speaks highly of his adherence to and acceptance of the rules and regulations.

**Life Without Possibility of Parole Is an Appropriate Sentence For Mr. Beardslee.**

It is obvious that Mr. Beardslee functions extremely well in the structured institutional environment of prison, and he has demonstrated that he is an asset to the institution and staff. If Mr. Beardslee's sentence is commuted to life in prison without the possibility of parole, I have no concern whatsoever about him being a security risk and/or troublemaker. At present, the CDC has at minimum nine new-generation Level IV prison facilities. Mr. Beardslee would be classified and placed in a Level IV institution where he would be eligible to work as a clerk or assist in a classroom. Given his commitment, he would no doubt volunteer for such a position, and given his skills, he would be an asset.

Mr. Beardslee's unrelenting positive attitude suggests to me that he would adjust quickly and without difficulties to a Level IV facility. He has maintained a documented positive attitude during his almost twenty-one years on death row. I have witnessed that the weight and pressure of living as a condemned man whose execution is imminent is extremely debilitating and wears down inmates' morale. But not Donald Beardslee. His positive attitude is a true testament to his ability to function so well in a structured environment, and I do not see that being altered by a Level IV facility. In fact, given his demonstrated eagerness to avail himself of opportunities to assist institutions, I believe he would be a positive role model for others.

I am certain that if Mr. Beardslee is granted clemency he will not pose any threat to either staff or inmates. In fact, Mr. Beardslee has in effect already functioned extraordinarily well

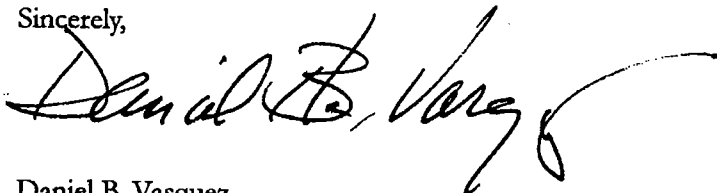
January 9, 2005

in the custody capacity of a Level IV inmate for over two years at San Quentin when he was assigned to the condemned inmate worker's program. As noted above, he posed no threat while in this program and on the contrary received many laudatory reports and became a trusted and highly appreciated and relied upon inmate worker, working alongside staff in the unit office where staff congregated and from where they reported to and from their work assignments.

Nor is there any risk of Mr. Beardslee ever being released from the structured prison environment in which he excels. Given a life without possibility of parole sentence, Mr. Beardslee would never be released or paroled in his lifetime. Even any prison transfer recommendation or consideration would be under the departmental operational manual policy requiring the review of the departmental review board (DRB), and requiring the Director of Corrections' approval.

Donald Beardslee is the rare inmate. He is a true asset to the safety and smooth running of the institution. Recognizing his laudatory adherence to prison regulation and contribution to the safety of prison staff and other inmates not only takes into account the historical record and current attributes of the person whom the State seeks to execute, but also best guarantees the safety of those working and living on death row. Killing him would be a shame.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel B. Vasquez", with a long, sweeping flourish extending to the right.

Daniel B. Vasquez

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 58: Letter by Ben Aronoff**



Ben Aronoff  
2290 Bethards Drive, Apt. 24  
Santa Rosa, CA 95405

January 8, 2005

Governor Arnold Schwarzenegger  
Office of the Governor  
State Capitol  
Sacramento, CA 95814

Re: Clemency Petition for Donald J. Beardslee

Dear Governor Schwarzenegger:

I was a Correctional Officer at San Quentin from 1983 to 1985. During that time, I worked in virtually all sections of the prison. I have reviewed salient portions of Mr. Beardslee's California Department of Corrections file and conclude that his record at San Quentin has been quite impressive. I write to urge you to commute his death sentence to life without the possibility of parole.

Mr. Beardslee's record sets him apart as the model inmate in whose behavior any correctional officer would find immense comfort. Prison life necessarily entails the imminent threat of violence. The prison system in general and death row in particular can be dangerous and volatile. Inmates, including those on death row, often fashion or obtain weapons. Indeed, on one occasion when the institution cleaned out the sewer lines, over 1200 weapons were located. The tension, violence, hostility, and danger present on California's Death Row makes Mr. Beardslee's record all the more laudatory.

What impresses me most about Mr. Beardslee's record is his commitment to the safety of the institution. Although Mr. Beardslee did not live in Donner Section, his work assignment was there. Donner Section housed the most difficult and combative inmates, including those inmates sent there for serious rule violations. Guards who worked in this section were allowed to wear protective clothing because inmates frequently threw things at them. Violence frequently erupted in the unit. I personally knew a guard who was stabbed while working there. It was very important that the yards ran according to strict separation of inmates who otherwise would most certainly have initiated potentially deadly violence. As one officer put it, Mr. Beardslee was "instrumental in preventing incidents in the unit by correcting errors in yard assignments." I never saw that level of dedication to institutional safety from any inmate on San Quentin's death row.

It has been my experience that the security of California correctional officers depends on the orderly running of institutions and the degree to which inmates cooperate with and abide by the rules. It appropriately promotes the safety of officers, when, in the rare case, an inmate's exceptional behavior is recognized by an act of clemency. Such appreciation

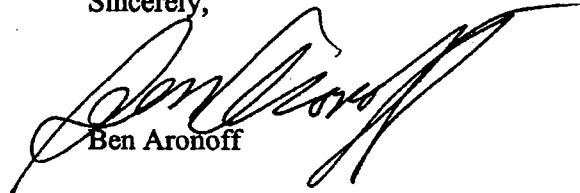
Governor Schwarzenegger

January 8, 2005

Page 2 of 2

sends a strong message to other inmates that positive behavior will be acknowledged, thereby encouraging other inmates to follow the example set by the individual. It is for this reason, that I strongly encourage you to grant Mr. Beardslee clemency.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Aronoff", with a long, sweeping horizontal stroke extending to the right.

Ben Aronoff

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 59: Declaration of Ricki Soria**

## DECLARATION OF RICKI SORIA

I, Ricki Soria, declare as follows:

1. In April 1981, I was arrested, along with Bill Forrester, Frank Rutherford, Ed Geddlings, and Donald Beardslee for the murders of Patty Geddlings and Stacy Benjamin. I was eighteen years old. At the time the crimes occurred, I was living with Donald Beardslee, but we were not romantically involved.

2. My attorney and Carl Holm, the District Attorney who was prosecuting the case, told me that I was likely facing the death penalty unless I cooperated with law enforcement agents in exchange for a plea bargain for a lesser sentence. I believed them, and in November 1981, I pled guilty to second-degree murder in exchange for my testimony against the other people arrested for the crimes. I testified against Frank, Bill and Ed.

3. Don's trial attorneys did not interview me regarding his behavior at the time of the crimes, and I did not testify in Don's trial.

4. I met Don early in 1981, when I was hitchhiking and he picked me up. We hung out that day and a few other times. But, then, we did not see each other again until March 1981. When I next saw Don, I was barely alive and he literally saved my life. I had been staying with various friends, including Frank Rutherford and Ed Geddlings. One day, Frank injected me with morphine sulfate. We were all partying, and he told me I would like it. It knocked me out to the point that I could barely move. Frank put me in car with another guy, Billie Quick, who liked to do drugs as much as Frank did. Billie took me to the abandoned Hamm's brewery, where he lived. For two or three days, Billie kept me there, injecting me with morphine sulfate and raping me.

5. Finally, Billie's girlfriend helped me escape. I had no money and was very sick, but I made it to a gas station and hitched a ride to San Mateo. In San Mateo, I sat in the rain all night waiting for a bus to Redwood City. When I got to Redwood City, I was a feverish mess. I had Don's number, so I called him. He came and picked me up and took me to the hospital. He

  
RS

paid for my medication and took me back to his place. I stayed in bed for two weeks and he nursed me back to health. I owe him my life.

6. Don was a meek and mild person. When I lived with him, I felt safe. There was nothing about him that made me afraid, even though he told me that he was on parole for murder. He was a real square and a perfect gentleman. Don did not ask anything of me, such as sex or rent money. I came and went as I pleased. He tried very hard to help me kick my drug habit and was disappointed when he knew I was hanging around my old friends doing drugs, but he never threatened to kick me out.

7. Unlike Don, Frank Rutherford scared me. He liked to talk about killing people. For amusement, he told awful, gory stories about the people he killed in Vietnam. He described the guns, the bombs going off, and the killings. Shortly before the crimes, Frank bragged about shooting a bartender in the knee to keep him from testifying against Frank's uncle.

8. Frank had the effect of brainwashing people. It was hard to think for yourself because you did not want to cross Frank. Frank would pretend to be your best friend, but he dominated people with weak minds, like Don.

9. Frank was in control during the events surrounding the crimes. He enjoyed being in charge and took pleasure in causing pain to those who crossed him or his friends. He, not Don, was telling me what to do. He basically was telling everyone including Don what to do. He kept telling me to drive different people, like Ed Geddlings, to any place they wanted to go. He told me to get his gun from Don's car and he told Don to get Patty cleaned up after Frank shot her. Then he made Don wash his bloody pants. It was his idea to clean up the bloodstains in Don's apartment. When Frank and Eddie wanted to talk, they just grabbed Don's keys and left, without asking. Don did not say anything. We were all Frank's puppets. Frank had us all under his power because he told everyone that he knew where everyone's family was and even if he got caught, he had family that would go after our families.

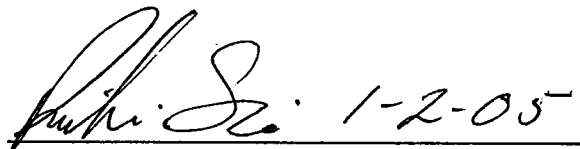
10. When the gun went off in Don's apartment, Don went into another world. He became unnaturally quiet and robot-like. From that point on, Don took orders without question.

or protest and just did what he was told. He was not coaxing or reacting, but just acted vacant. When I testified at the different trials that Don seemed cold, I meant he was mechanical and distant. He was not thinking; he was simply going through the motions. Don and I were both on edge.

11. During the crimes, Don was a completely different person and even when he was talking to me, he looked like he was thinking of nothing, but was off in space. At one point, he was so far gone and in a trance that he did not hear Frank yelling for him. Frank yelled for him a few times and still Don did not hear. Don came out of his trance and responded only after I yelled at him.

12. When Bill Forrester, Don, and I were up on Bean Hollow Road, Don was no different. He was mechanical, quiet and his eyes were checked out. Bill shot Patty then he moved the car and gave the gun to Don. About eight minutes or so minutes after Bill had fired the first set of two shots, Don fired the second.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States and the State of California on January 2, 2005.

  
RICKI SORIA

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 60: Declaration of Karen Kelly**

## DECLARATION OF KAREN KELLY

I, Karen Kelly, declare as follows:

1. I am Donald J. Beardslee's ex-wife. We married in 1966, when we were both in our early twenties. He was always Don to me, and other times I called him sweetie or honey.

2. I met Don when I was living in Duluth, Minnesota, where I grew up. He was in the Air Force at the time. We met not long after Don suffered a serious head injury in 1966. He suffered from headaches from the injury, and the Air Force sent him to specialists to figure out what was wrong with him. He had a lot of headaches.

3. We met on the Air Force Base in Duluth. I really liked Don from the beginning. He was like a puppy dog that you just wanted to squeeze. We began to see each other regularly. We mostly spent time with just the two of us, or with family, because Don did not have many friends.

4. I married Don because I loved him and he was so sweet to me. After we got married, Don moved out of the barracks, and we got an apartment together in Duluth. A lot of times we would sit together and watch television. Don liked to watch television because he did not have to make any decisions and he could be passive. I never knew Don to drink. We were not drinkers.

5. Don was vulnerable, and things hurt him very easily. I always thought of Don as Sad Sam, the stuffed beagle with droopy eyes that was popular in those days. When Don got that Sad Sam look, I knew he needed someone to reassure him that things were going to be okay. I saw him cry only once, but I knew he was hurting because he had a look of pain and sadness in his eyes. But for that, Don could not express any



emotions. He felt things inside, but he could not get his feelings to show and had a very difficult time expressing himself.

6. Instead, Don expressed himself in odd, quirky ways. He did inappropriate things, and he could not understand why people thought these things were odd. For example, when we were newly-weds and had just moved to Saint Louis, Missouri, we stayed at his mother's house. The first night there, I got into bed and Don went into his mother's room and stayed there talking with her for about an hour before returning to bed with me. I did not know what to make of his not understanding why I wanted to be with him or even why I was upset. Although he never seemed to understand how he affected me by his odd and nutty behavior, he surprised me by doing something sweet, like bringing me a rose. It was not even that he understood that he did things that others considered odd or weird. In fact, Don had no idea how other people viewed him. He had a hard time understanding other people, and other people had a hard understanding him, mostly because he could not explain himself to people. His answers to questions were just always a little off the topic or not quite right. He just did not understand what people were asking.

7. Don never got angry, not even once. He never yelled. I got angry and yelled, and he just asked what was the matter. When I told him, he looked at me blankly, not understanding what the problem was or why I was upset. He tried hard to understand feelings people were expressing but it did not register. He was not callous or uncaring, just disconnected. His emotions were completely flat, like a straight line. He did not even enjoy sex. He just did not get any fulfillment from it, and he had no idea what to do. But he loved to be held. Life was like a flat line for Don. My life is full of ups and downs.

8. I know that Don cared for me very much. As much as he could, he showed me the ways I mattered to him. He tried hard to take care of me. Once when we were just dating, I had terrible cramps. I was curled up into a ball under the covers in my bed because it hurt so badly. Don lay down on the bed on top of the covers and just held me and talked to me all night until I finally fell asleep. This was Don at his best, doing the simple thoughtful things. It was when it came to the more complicated aspects of living that I realized that Don needed someone to take care of him.

9. Don wanted everyone to like him, and tried to fit in. Because he was a follower rather than a leader, he did his best to belong by going along with what everyone else was doing. Even though Don's brother Richard was younger, he was more of an adult than Don. Don looked up to him like a little puppy that needed taking care of. He behaved at the emotional and mental age of a fourteen year old, and sometimes he even did things that a twelve year old would do, not a grown man.

10. Safety for Don was his family. He especially missed his dad. He talked a lot about his dad, and told me a lot about him. He loved animals, especially his brother Richard's Sheltie and his sister Carol's dog. His mother Lillian was very aloof, but he worshipped her, and I sensed that she really worried about him. All of Don's family worried about him, and I noticed that they were always watching him and hoping that no one noticed. It was like they were keeping an eye out for him. Don was more comfortable around his family than he was around others. In groups, he did better when everyone else was talking and he did not have to say anything. He just melted into the background, waiting for direction.

11. Don had a very hard time making decisions. He struggled with having to choose, or worse, solve problems. He needed structure. He needed his four walls. That

is why he liked the military. For example, one time when Don had first moved out of the barracks and we moved into the apartment in Duluth, Don was outside working on his car, a Chevy Corvair. A man who lived in the apartment building came out and asked Don if Don wanted help fixing the car. Don did not know what to say. He said, "I'm not sure," and came inside and asked me what to say. He said to me, "Can he help me? Is that ok?" I told him "yes, sure, of course it is ok." Don got lost and frozen like that a lot when he had to make a decision or figure out a new situation. He needed someone else to make decisions for him. He did not know what was expected, and he did not even know that he was supposed to know what to do. He needed permission from other people before he could do anything. He tried to hide his inability to make decisions. He told people, "Let me ask Karen."

12. Don was very gullible. Many times people took advantage of him. He was very suggestible. If someone said to him, "Want to buy the Arial bridge," which is a bridge in Duluth, he probably would ask me if we could buy it. Once a man came to our house to talk to Don about becoming a truck driver. The man told Don that he could make a lot of money, but first he needed to buy the truck for \$80,000. This was back in 1966. Don was gullible enough to think that we could afford it and to think that he really would make the money back right away. I think Don would have written a check for \$80,000 right then if I had not been there to stop him, and he probably even thought that we had enough money in our account to cover it. I handled all of our money since I do not think that Don even knew how.

13. When we decided to move to St. Louis from Duluth, even though Don was excited to go home to the safety of his mother, he was also scared because of the change.

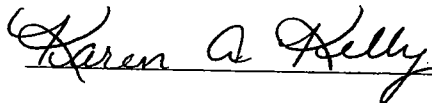
14. I think Don felt safe and comfortable with me unlike with most other people in the world. To me he was a teddy bear that needed taking care of. I took care of him, and I loved doing things for him. In the end, this was not enough for me. I left him because I needed to find someone who could take care of me too, someone who could understand me. Don and I had an amicable divorce.

15. Don tried, but he was not able to take care of me. Don needed a pole to hang onto to keep him upright. He had a hard time on his own, and needed a security blanket. Everyone needs that sometimes when life gets especially hard, but for Don he needed that for daily life. He needed his little box to keep him safe.

16. When I first heard that Don was in prison for murder, I did not believe it. I thought that they must have the wrong Donald J. Beardslee. I never got the feeling that he would hurt me or anyone else. I really wondered if they had the wrong man. He is just not up to doing something like that.

17. I understand that the State of California seeks to execute Don. Given all I know about Don and his vulnerabilities, I think that he deserves mercy.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States and the State of California on January 5, 2005.



KAREN KELLY

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 61: Letter by John W. Schoen**

Governor Arnold Schwarzenegger  
Sacramento, CA

300 Niki Road  
Paradise TX 76073  
jgljetjock@earthlink.net  
6 Jan 2005

Dear Governor Schwarzenegger,

I respectfully request you rule favorably on my Cousin Donald Beardslee's (CDC# C-82702) request for clemency for the following reasons:

- There is new evidence that Don has had brain damage since birth.
- Don has been a model prisoner during his incarceration.
- His siblings/Cousins are all productive, successful, model citizens

As you review his package please look carefully at the brain scan and the expert Physicians interpretations of how the brain damage affected his judgment and his ability to make correct decisions the rest of us normally make.

Please look for any negative statements by your prison staff. I am confident you will only find that Don has obeyed all instructions and behaved in a manner that exceeded their expectations.

Here is some information about his family that may not be part of the package you are reviewing: (Last names have been withheld for their personal security)

Don's mom, Lillian was the Business Manager for the Associated General Contractors of St. Louis, MO.

Don's dad was a Fire Chief in the St. Louis Fire Department (Unfortunately he died of Cancer in 1954).

Don's late Aunt (Lynne Albert (Schoen) was an accountant for the Frisco Railroad.

Don's Uncle (My Dad) Adolph (Bud) Schoen) was the President of Daggett Auto Body who did all the work for Vincel Pontiac, the largest Pontiac Dealer in the Midwest in the 1960/70's.

Don's Aunt (Charlotte) was a successful housewife married to a machinist who had a very successful career with Century Electric and Chrysler.

Don's Brother was a Police Officer with the LAPD and retired as a Sergeant.

Don's Sister held many high level Officer Positions with major corporations in the Los Angeles Area.

Don's Cousin Lynne is a retired school teacher and is married to a senior executive with Proctor and Gamble.

Don's Cousin Nancy held responsible positions with Bell Telephone and has been a successful wife/mother to an executive with many major department stores.

Don's Cousin, John Schoen (me) retired from the USCG as a Commander and now is an airline pilot with American Eagle Airlines.

Don's Cousin, Sue is a very successful wife/mother who is married to a very successful President of a steel marketing company.

Don's Second Cousin, Chet is a retired executive with Dell Computer Corp.

Don's Second Cousin, Todd is a Prosecuting Attorney in Eugene, OR.

Governor, the question I pose to you and to myself is: Why is Don so different than the rest of us? I always wondered and was certainly bothered when I learned of his incarceration years ago. Now with new technology and more knowledge about physiological behavior, it has become clear to me that the reason Don did "stupid" things when we were younger was because the part of his brain that we all use to make the proper judgments was not there for Don. I hope you come to the same conclusion.

My Dad, all his sisters, and all my cousins were all raised and taught the value of looking out for others and the value of a strong work ethic. From what I have learned of Don's behavior while in your prison system, he too has presented a strong work ethic when given the opportunity.

While I am a proponent of the Death Penalty, I do not think it is appropriate for people who have a mental illness.

Please take the issues I have addressed into your consideration while making your difficult decision for clemency.

Very Respectfully,



John W. Schoen  
Commander  
United States Coast Guard (ret)

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 62: Declaration of Dr. George W. Woods, Jr., M.D.**



## **DECLARATION OF GEORGE W. WOODS, JR., M.D.**

I, George W. Woods, Jr., M.D., declare as follows:

1. I received my bachelor's degree from Westminster College in Salt Lake City, Utah, in 1969. I received my medical degree from the University of Utah in 1977. I completed my psychiatric residency at the Pacific Medical Center in San Francisco, California, in 1981, and participated in a National Institute of Mental Health/American Psychiatric Association Fellowship in 1982. I received my board certification in Psychiatry, by the American Board of Psychiatry and Neurology in 1992.

2. I am a Fellow of the American Psychiatric Association. I am also a member of the American Psychological Association and the American Neuropsychiatric Association.

3. I currently am a member of the Board of Directors of the International Academy of Law and Mental Health and serve on the Academy's Scientific Committee. I also am on the Advisory Board of the Health Law Institute, DePaul University Law School, Chicago, Illinois.

4. From 1989 to 1994, I was the Clinical Director of the New Beginnings Program, an inpatient, co-occurring disorders substance abuse detoxification and rehabilitation center housed at Doctors Hospital in Pinole, California. I was appointed Senior Consulting Addictionologist to the New Beginnings Programs at Doctors Hospital, and San Ramon Regional Medical Center, San Ramon, California, and served in that position from 1994 to 1996.

5. I am an Adjunct Professor at Morehouse School of Medicine, Atlanta, Georgia, where I teach a course entitled "Clinical Aspects of Forensic Psychiatry." I am also Adjunct Professor in the Department of Educational Leadership and Public Policy at the California State University, Sacramento. I have lectured extensively nationally and internationally on issues of chemical dependency, criminal responsibility, competency, and trauma.

6. I was Adjunct Professor at the University of California, Davis, Medical School, Department of Psychiatry, in the postgraduate Forensic Psychiatry Fellowship from 1996-2000. I also have served as Affiliate Professor at the University of Washington, Bothell campus, from 1998 to 2003.

7. I was a technical advisor to the Kenyan and Tanzanian Medical Associations, assisting in the development of clinical and research responses to the August 7, 1998 Kenyan/Tanzanian U.S. Embassy bombings. I currently am a technical advisor on neurologically-induced psychiatric manifestations of malaria for the Kindogo Chekundu Mental Hospital, Zanzibar, Tanzania.

8. I maintain a clinical private practice in Oakland, California. I have been qualified and testified as an expert in numerous civil and criminal cases in state and federal courts.

9. Attached to this Declaration is a true and correct copy of my curriculum vitae.

10. In 1995, I was asked by Mr. Beardslee's federal counsel to examine Mr. Beardslee and render a diagnostic opinion as to his psychiatric functioning. I further was asked to describe how Mr. Beardslee's mental condition affected his ability to form the requisite mental state at the time of crime and explain the mitigating features associated with Mr. Beardslee's mental functioning that may have been relevant to the jury's determination of the appropriate punishment.

11. Accordingly, I conducted two clinical interviews with Mr. Beardslee, reviewed materials provided to me by counsel, including the results of psychological and neuropsychological testing administered to Mr. Beardslee after his conviction and sentence of death. The results of neuropsychological testing noted significant disparities between functioning in Mr. Beardslee's left and right hemispheres of his brain. Physical description and examinations noted marked asymmetry in strength, speed, and dexterity between the left and right sides of his body.

12. Based on the information provided and my clinical observations, I concluded that Mr. Beardslee suffered from a Schizophreniform Spectrum Disorder. Schizophreniform Spectrum Disorder encapsulates the range of psychiatric disorders that manifests aspects of schizoid symptomatology, consistent with the isolation and avoidance of Schizoid Disorders, the oddities of language, magical thinking, and proclivity to psychosis of Schizotypal Disorders, the delusions and psychosis seen in delusional disorders and Schizophrenia, as well as the neuropsychological findings relevant to these disorders. Because Mr. Beardslee manifested

clinically significant symptoms of schizoid personality disorder, schizophreniform disorder, and schizophrenia, the diagnosis of schizophreniform spectrum disorder was appropriate.

13. The forensically relevant clinical symptoms Mr. Beardslee manifested – and continues to manifest – and upon which I relied in making my diagnosis, included a history of extreme isolation, emotional blunting, passivity, poor affect, oddities of speech marked by formal and stilted language, a proclivity to dissociation under chemically-induced or stressful conditions, flattened affect, difficulty expressing emotions, and a pronounced thought disorder detected repeatedly in psychological testing.

14. Prior to reaching my conclusions, I also found relevant Mr. Beardslee's cognitive strengths and history of periods of adequate functioning. Psychological testing completed in 1983 and 1984 found that Mr. Beardslee possessed some cognitive strengths in academic areas such as speaking and writing in addition to psychiatric symptoms of bizarre thinking, depression, and paranoia. This pattern of strengths and deficits is understood and well-accepted in the neuropsychiatric community, although not easily understood by lay persons. Individuals with cognitive deficits and mental illness often exhibit relatively normal functioning in some areas – for example, the ability to communicate, operate a motor vehicle, or maintain employment.

15. Based on my diagnosis, I concluded that Mr. Beardslee's mental illness likely significantly impaired his functioning during the crimes for which he was sentenced to death. I further concluded that Mr. Beardslee's mental illness rendered him more susceptible to coercion based on fear for his safety. I also noted that Mr. Beardslee's impaired neuropsychiatric function was compounded by several serious traumatic brain injuries, which increased his vulnerability to dissociative states.

16. Counsel at the Habeas Corpus Resource Center have asked me to review my initial findings in light of recently obtained neurocognitive findings and conclusions, extensive descriptions of Mr. Beardslee's behavior since birth, more detailed observations of Mr. Beardslee's behavior during the sequence of events surrounding the commission of the crimes, and an additional clinical interview of Mr. Beardslee and revise, if appropriate, my previous conclusions regarding the presence of neuropsychiatric disorders and the functional impact of

any such disorders at the time of the commitment offense, his arrest, interviews with police, and during his trial.

17. The additional material that I have reviewed includes Dr. Ruben Gur's neuropsychological findings and conclusions detailed in his declaration of December 30, 2004, the 2004 declarations of Mr. Beardslee's brother, sister, ex-wife, and cousin, and the January 2, 2005 declaration of Ricki Soria, who was present during the crimes. This information was not available to me when I rendered my initial opinions. After analyzing this material and conducting a literature review, I consulted Myla Young, Ph.D. to discuss her psychological and neuropsychological test results and conclusions in light of Dr. Gur's recent findings. Dr. Young confirmed that Dr. Gur's current findings are consistent with her previous clinical interview and testing. In addition, I conducted a clinical interview with Mr. Beardslee on January 6, 2005.

18. Dr. Gur's findings comprehensively and graphically document significant dysfunction of Mr. Beardslee's brain. As Dr. Gur noted, "Mr. Beardslee is most severely impaired in the right hemisphere of his brain with pronounced impairment in the right parietal, sensorimotor, dorsolateral prefrontal and orbital frontal areas. Dysfunction is more focal in the left superior to midtemporal and orbital frontal."

19. Dr. Gur's findings are critical to a complete and accurate assessment of Mr. Beardslee's mental functioning. The operational impact of brain dysfunction can produce a variety of clinically relevant behaviors consistent with different symptoms and diagnoses, thereby causing or augmenting neuropsychiatric syndromes. Although distinguishing neurological disorders from neuropsychiatric disorders is often a complex endeavor, the distinction is important for understanding behavior and proscribing appropriate treatment. As Gary Tucker, M.D., observed in discussing differentiating neurological disorders from psychiatric disorders:

At a practical level, the neuropsychological changes associated with cerebral disease include poor affect control or a lack of affect, changes in intellectual functions, impairment of memory and orientation, and defective judgment . . . . These changes in themselves have great impact not only on the

patient, but on his her interactions with others, perhaps especially family members. Family members or other caregivers often believe, erroneously, that the abnormal behavior evidenced by the patient is willful or directed at them. It is vital that those caring for the patient understand that the observed behaviors are not under the voluntary control of the patient. Tucker, "Differentiating Neurological Disorders from Psychiatric Disorders," *Seminars in Clinical Neuropsychiatry*, (July 2002), 7(3):163-169.

20. Following my review of the newly available information and research, it is my professional opinion that the brain deficits that Dr. Gur identified are a critical source of the psychiatric symptoms features that I, and many others throughout his life, have noted. These brain deficits augmented and exacerbated the psychiatric disorders that I identified in 1995. Dr. Gur's neuropsychological analysis and recent medical advances in understanding the effect of dysfunction in the areas of the brain where Mr. Beardslee has severe deficits for the first time identify the locus, severity, and importance of the profound brain damage that operated to govern Mr. Beardslee's behavior throughout his life, and particularly in the events surrounding the crime and his subsequent capital trial. The findings and resulting neuroimage of Mr. Beardslee's brain confirm for the clinician – and demonstrate for the layperson – the neurostructural mechanism for Mr. Beardslee's behavior. Importantly, Dr. Gur's findings establish the intractable, immutable nature of the deficits in Mr. Beardslee's brain structure and demonstrate that the behavior resulting from these deficits cannot be attributable solely to volitional or controllable action.

21. Dr. Gur's findings and recent research explains the heretofore seemingly inexplicable behavior reported by family and friends and the atypical psychiatric psychotic features manifested in his clinical picture. Importantly, the recent findings and research, and the lay observations of a co-defendant's observations of Mr. Beardslee at the time of the crimes, provide clinical confirmation of the extent and cause of Mr. Beardslee's dissociative mental state during the course of events. Recent research has established that dysfunction of the temporal and parietal lobes, particularly the right parietal lobe, increases the incidence of neurologically-

derived dissociative experiences. See, e.g., Blanke, Landis, Spinelli, & Seeck, "Out of body experience and autoscapy of neurological origin," *Brain*, (2004), 127:243-258; Lou, et al., "Parietal cortex and representation of the mental Self," *PNAS*, (2004), 101:6827-6832; Kjaer, Nowak & Lou, "Reflective Self-Awareness and Conscious States: PET Evidence for a Common Midline Parietofrontal Core," *NeuroImage*, (2002), 17: 1080-1086.

22. Dr. Gur's findings provide a structural basis for understanding Mr. Beardslee's life-long inability to master social cues and respond appropriately to emotional stimuli. As Dr. Gur stated, "The functions involved in the process of self-recognition include the rudimentary ability to know where we are in space and the physical boundaries of our own bodies, as well as more complex processes such as understanding the relevance to self of emotional stimuli and integration of appropriate motoric responses." This impairment is prosody, the ability to recognize neutral and emotional facial expressions, is consistent with the neuropsychiatric literature as a common finding with persons that have the potential for psychosis.

23. Mr. Beardslee's emotional disconnect and flat affect were well documented prior to Dr. Gur's evaluation and clinically support the presence of a major mental illness. Dr Gur's findings provide another source for this emotional blunting. He notes, "Given the nature and severity of Mr. Beardslee's neuropsychological deficits, I also would expect them to have had a significant impact on Mr. Beardslee's presentation and level of comprehension at trial. Mr. Beardslee's constricted emotional range was likely to be viewed as indicating aloofness, indifference or even callousness." I fully concur with Dr. Gur's findings and conclusions. As a result of his brain deficits and underlying psychosis, Mr. Beardslee is thus limited in his ability to correctly perceive emotional stimuli or respond in an appropriate manner. To those unaffected with his impairments, Mr. Beardslee's flat affect may appear as disinterest or insensitivity. At trial, Mr. Beardslee's expressionless demeanor stemmed not from his coldness and remorselessness, but rather the result of his brain dysfunction.

24. In my initial assessment of Mr. Beardslee, I noted that his schizotypal personality features in conjunction with the multiple incidents of severe neurological trauma increased in his susceptibility to dissociative states. Dr. Gur's findings of deficits in the more posterior right

parietal regions as well as the temporoparietal junction endorse this propensity, as noted. Mr. Beardslee's temporoparietal impairments augment those social and cognitive deficits seen in schizophrenia, particularly social deterioration, impaired social functioning, and isolation. Donald Beardslee's brain vulnerabilities both contributed to and exacerbated his Schizophreniform Spectrum Disorder. This congenital vulnerability towards dissociation is born out in the reports of family members that document Mr. Beardslee's frequent frank dissociative episodes. He "zoned out" or "checked out" and was observed with glazed eyes and a drooped mouth. Myla Young, Ph.D, in her 1995 psychometric testing, noted impaired processing speed, now known to be a potential marker for psychosis.

25. The prodromal feature of psychotic disorders, captured in the memories of family members and others when Donald was younger, define his adolescence and early adulthood. Donald's sister described the differences between Donald and her, as well as his younger brother, in her declaration;

In almost all ways in which a person exists in the world, Donald was a misstep or two off. His communication was weird, he could not express emotion, he said socially awkward things, and he was forever naive. Richard and I grew, changed, and matured, Donald did not. All of the qualities that made him an odd ball remained throughout the years as did his childlike vulnerabilities. He seemed to stay stuck at age thirteen or fourteen. We wondered if Donald's birth had something to do with how different he was from the other children. When Donald said something spontaneous, you could count on him to say the wrong thing. He made off the wall comments that caused our family much embarrassment. There were times when Donald said the wrong thing and I had to explain to people around us that he did not really mean what he had said. Our family always looked out for Donald so that people did not get mad at him or reject him for the things that he said. When Donald was around and we were in social situations, I usually felt nervous and apprehensive because it seemed like he was always saying the wrong thing. This aspect of Donald's behavior was very hard for Richard because

Donald's difficulty making friends meant he followed Richard and his friends around. Richard's friends called Donald a "goof-ball." Not only did Richard have to protect Donald from other kids who were constantly trying to take advantage of Donald, but he was also having to prove to the world that he was not like Donald. It was hard for him when people found out he was Donald's brother and he compensated by working extra hard. Richard always fought back and stood up for himself, while Donald never defended himself. Declaration of Mr. Beardslee's Sister, December 17, 2004.

26. Each and every one of these symptoms, lack of social understanding, isolation, withdrawal, physical uncoordination, inability to express emotion, is subsumed under the prodromal phase of psychosis.

Frequently, a diagnosis of schizophrenia is assigned when florid psychosis first manifests itself. However, converging evidence indicates that subtle behavioral and intellectual abnormalities often precede the first psychotic episode. Apparently healthy children and adolescents destined to develop schizophrenia manifest lower intelligence, withdrawn social behavior, conduct and adjustment abnormalities, and very mild neurological deficits (in comparison to classmates, siblings, matched comparison subjects, or population norms). . . . Schizophrenia did not occur exclusively within the population with the poorest intellectual performance, nor did it spare those who performed very well. Rather, a linear association was revealed between greater risk for schizophrenia and poor cognitive performance. These results indicate that risk for schizophrenia is a function of intellectual performance over the entire range of cognitive scores in the population and that intellectual impairment does not necessarily define a subgroup of individuals with schizophrenia....Poor performance of patients, relative to nonpatients, was also evident in variables assessing behavior. Poor social adjustment, characterized by few and tenuous social relationships, was the most powerful variable characterizing patients. Additional predictive behavioral



attributes were the ability to function independently in everyday life, precise timing and organizational ability, and participation in physical activities, which were also lower in patients. These results support existing data indicating relatively poor premorbid behavioral and personality adjustment among those destined to be diagnosed with schizophrenia, especially manifested in impaired social relationships. Davidson, Reichenberg, et. al, "Behavioral and Intellectual markers for schizophrenia in apparently healthy male adolescents," *American Journal of Psychiatry*, (September 1999), 156: 1328-1335.

27. The unique stressors present during the time of the crimes targeted Donald's constellation of neuropsychiatric and neurological vulnerabilities. Donald's paranoid ideation and magical thinking was that the threat of Frank Rutherford was real, present, constant, and inescapable. Frank Rutherford's reputation and actions were credible enough to engage Donald's magical thinking, so that even when Mr. Rutherford was not directly present and operative, his influence dominated. The neuropsychiatric literature is clear that this type of unbridled magical thinking is unrealistic and, by definition, not amenable to real environmental stimuli, like time and distance. We see the potential of intimidation in battered spouses, who continue to respond to the cues of their disorder even when the batterer is no longer in their life. This phenomenon can be exacerbated in someone like Mr. Beardslee, who has a vulnerability to psychotic thinking.

28. Mr. Beardslee's behavior at the time of the offense was completely consistent with the neurological deficits, anatomically and behaviorally, demonstrated by Dr. Gur's neuroimaging and neuropsychological testing. Ricki Soria describes Donald in classic dissociative terms, and makes it clear that, with Frank Rutherford's reputation and history, Donald's sense of being under the potential threat of death himself would be consistent with his inability to determine more complex, stress-related circumstances.

When the gun went off in Don's apartment, Don went into another world. He became unnaturally quiet and robot-like. From that point on, Don took orders without question or protest and just did what he was told. He was not coaxing or

reacting, but just acted vacant. When I testified at the different trials that Don seemed cold, I meant he was mechanical and distant. He was not thinking; he was simply going through the motions. Don and I were both on edge. During the crimes, Don was a completely different person and even when he was talking to me, he looked like he was thinking of nothing, but was off in space. At one point, he was so far gone and in a trance that he did not hear Frank yelling for him. Frank yelled for him a few times and still Don did not hear. Don came out of his trance and responded only after I yelled at him. When Bill Forrester, Don, and I were up on Bean Hollow Road, Don was no different. He was mechanical, quiet and his eyes were checked out. Declaration of Ricki Soria, January 2, 2005.

29. Ms. Soria describes precisely what Dr. Gur opined might occur given Mr. Beardslee's right hemisphere dystrophy:

The profound, likely lifelong damage to the right hemisphere of Mr. Beardslee's brain made him unable to correctly process and contextualize information. The impairment produced confusion and then paranoia under most unfamiliar circumstances, particularly those that involved social interaction with a number of different individuals. At such moments, when Mr. Beardslee's brain should have operated to put information and events into realistic perspective, it instead was the very source of a distorted perception of reality, which was then processed by frontal lobes significantly compromised in their ability to moderate responses to subcortical fight/flight impulses. Mr. Beardslee's inability to comprehend unexpected and changing circumstances, and flexibly integrate and respond to increasingly complex emotional stimuli, could itself be a source of confusion and panic that quickly overwhelmed him and triggered his susceptibility to mental dissociation.

30. It is my professional opinion, which I hold to a reasonable degree of medical certainty, that Mr. Donald Beardslee has profuse and pervasive neurological dysfunction. These deficits specifically include impairments in weighing and deliberating, developing alternative

strategies to problem solving, shifting his thinking when he receives cues from the environment, integrating actions with perceptions, interpreting and contextualizing actions and placing them in a larger sphere.

31. It is further my professional opinion, which I hold to a reasonable degree of medical certainty, that the sudden explosion of a gunshot in Mr. Beardslee's apartment triggered Mr. Beardslee's neurocognitive propensity to dissociate, rendering him susceptible to and under the influence of an irrational but real sense of fear and dominion, and impairing his ability to act under a soundly formed, resolute intent.

32. Finally, it is further my professional opinion that the synergistic effects of Mr. Beardslee's pronounced neurological and psychiatric disorders operate functionally to blunt Mr. Beardslee's emotional presentation and affect, producing behavior manifestations easily mischaracterized as indifference and coldness.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States and the State of California on January 9, 2004.

  
\_\_\_\_\_  
GEORGE W. WOODS, JR., M.D.



GEORGE W. WOODS, JR., M.D.

A PROFESSIONAL CORPORATION  
DIPLOMATE OF THE AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY

CURRICULUM VITA  
GEORGE W. WOODS, Jr., M.D.

EDUCATION:

Westminster College, Salt Lake City, Utah  
Graduated 1969

University of Utah, 50 North Medical Drive,  
Salt Lake City, Utah  
Graduated 1977

Internship - Medical/Surgical, Highland  
Hospital, Oakland, California, July 1977 to June  
1978

Residency - Psychiatric - Pacific Medical Center  
San Francisco, California, 1981  
Chairman: Allen Enelow, M.D.

Fellowship - APA/NIMH Fellowship Pacific Medical  
Center, San Francisco, California, 1981 to 1982  
Chairman: Jeanne Spurlock, M.D.

LICENSES, CERTIFICATIONS, AND DIRECTORSHIPS:

Licensed Physician in California, 1979

Interim License, Zanzibar Revolutionary Government,  
2004

Certified by the American Board of Psychiatry  
and Neurology, 1992

Fellow: American Psychiatric Association, 2004

International Board of Directors, International  
Academy of Law and Mental Health, 2003

Advisory Board, Health Law Institute, DePaul  
University College of Law, 2004

Advisory Board, Human Dignity and Humiliation  
Studies, University of Oslo, Norway, 2004

Board of Directors, The Center for African Peace and  
Conflict Resolution, College of Health and Human  
Services, California State University, Sacramento,  
May 2004

CLINICAL PROFESSIONAL EXPERIENCE:

Clinical Consultant, Kidongo Chekundu Mental  
Hospital, Zanzibar, Tanzania, December 2004

Scientific Committee, International Academy of Law  
and Mental Health, June 2004

Advisor to the Jomo Kenyatta National Hospital, PTSD  
Project, Nairobi, Kenya, May 27, 1999 to 2003

Consultant to the Board of Directors, Crestwood  
Behavioral Health Systems, Stockton, California,  
1998 to 2004

Technical Advisor, Documentation Committee,  
Operation Recovery, Kenya Medical Association,  
August 1998 to 2004

Technical Advisor to Recovery Services, Ministry of  
Health, United Republic of Tanzania, August 1998 to  
2003

Individual Private Practice, Oakland,  
California, 1996 to Present

Individual Private Practice, San Francisco,  
California, 1996

Individual Private Practice, Pinole,  
California, 1988 to 1996

Consultant, Insomnia Division of the Sleep  
Disorders Center, Doctors Hospital, Pinole,  
California, 1990 to 1995

Senior Consulting Addictionologist, New  
Beginnings Programs, San Ramon and Pinole,  
California, 1994 to 1996

Chemical Dependency Consultant, Physicians'  
Advisory Committee, Alameda Contra Costa Medical  
Association, 1994 to 1995

Clinical Director, New Beginnings Chemical  
Dependency Program, Doctors Hospital, Pinole,  
California, December 1989 to 1994

Medical Director, Pain Management Program,  
Doctors Hospital, Pinole, California, 1990-1994

Coordinator, Insomnia Division of the Sleep  
Disorders Center, Doctors Hospital, Pinole,  
California, 1990 to 1994

Qualified Medical Examiner, Industrial  
Medical Council, State of California,  
1992 to 1994

Psychiatric/Pharmacologic Consultant, Triumph  
Over Pain (TOP Program), Kentfield  
Rehabilitation Hospital, Kentfield, California,  
1991 to 1994

Private Practice, Comprehensive Psychiatric  
Services, Walnut Creek, 1988 to 1993

Psychiatric Consultation, NeuroCare Corporation,  
Concord, California, 1991 to 1993

Staff Psychiatrist, Crestwood Manor, Vallejo,  
California, 1983 to 1990

Medical Director, Westside Geriatric Services of  
Family Service Agency of San Francisco, 1982  
to 1983

Staff Psychiatrist - Villa Fairmont Psychiatric  
Facility, 15400 Foothill Lane, San Leandro,  
California, 1982 to 1983

Assistant Director of the Inpatient Center,  
Director of Geriatric Services, Pacific Medical  
Center, 2121 Clay Street, San Francisco,  
California, 1981 to 1982

Medical Director, Clinica De La Raza, Blythe,  
California, 1980 to 1981

Emergency Room Physician, Medical Emergency  
Services, Fairmont Hospital, San Leandro,  
California, 1979 to 1981

Emergency Room Physician, Psychiatric Emergency  
Services, Highland General Hospital, Oakland,  
California, 1979 to 1981

Faculty and Professional Appointments:

Adjunct Professor, California State University,  
Sacramento, Department of Educational Leadership and  
Public Policy, Sacramento, California, January 1,  
2003 to present

Adjunct Professor, Morehouse College School of  
Medicine, Atlanta, Georgia, March 01, 2002 to  
present

Affiliate Professor, University of Washington,  
Bothell Campus, Interdisciplinary Arts and Sciences,  
1999 to 2004

Adjunct Professor, University of California,  
Davis, Department of Psychiatry, Forensic  
Fellowship, 1996 to June 24, 2000

Adjunct Professor, University of Nebraska,  
Omaha, College of Public Affairs, 1986 to  
2002

Summer Faculty, North Central Educational  
Research Laboratory, Northeastern University,  
1992

Professional Lectures:

*Diagnosis and Treatment of malaria-induced altered  
mental states: Kidongo Chekundo Mental Hospital,  
Zanzibar, Tanzania, December 12, 2004*

*Law, Mental Health, and Popular Culture: University  
of San Francisco College of Law, November 4, 2003*

*Accommodating Mental Illness in the Workplace: 28<sup>th</sup>  
International Conference, International Academy of  
Law and Mental Illness, October 3, 2003*

*Cultural and Psycho-biological Factors In the  
Assessment and Treatment of Trauma: Don't Believe  
Everything You Think, Traumatology 1003, The Trauma  
Recovery Institute, Morgantown, West Virginia,  
February 3, 2002*

*Trauma, Recovery and Resiliency, University of  
Washington, Bothell Campus, October 10, 2001*

*Understanding the Relationship Between Neuroimaging,  
Neuropsychology, and Behavior, National Medical  
Association 2001 Annual  
Convention and Scientific Assembly, Nashville,  
Tennessee, August 07, 2001*

*The Thrill Is Gone, Keynote Address, African*

American History Month, Loras College, Dubuque,  
Iowa, February 28, 2001

*Disparate Access to Healthcare*, University of  
Washington, Bothell Campus Nursing Program, February  
19, 2001

*Anger Management*, West Contra Costa Stroke and  
Aphasia Support Group, Doctors Hospital, San Pablo,  
California, November 2, 2000

*Race, Culture and Bio-ethics*, American Society for  
Bio-ethics Annual Conference, Panel Discussion, Salt  
Lake City, Utah, October 28, 2000

*Globalization and Postmodernism*, International  
Congress on Law and Mental Health, Siena, Italy,  
July 13<sup>th</sup>, 2000

*Globalization and Neuropsychiatry: Answers that  
Transcend Culture?* International Congress on Law and  
Mental Health, Siena, Italy, July 13<sup>th</sup>, 2000

*Managed Care in the Kenyan Medical Environment*,  
Kenyan Medical Association, Aga Khan Hospital,  
Nairobi, Kenya, September 07, 1998

*The Relationship Between Holidays and Mood  
Disorders* - Doctors Hospital, Pinole,  
California, November 22, 1994

*The Role of the Mental Health Expert as a  
Liaison Between Chemical Dependency and Pain  
Management Programs* - American Academy Of Pain  
Management, Vancouver, Canada, August 18-21, 1994

*Chemical Dependency: Selected Topics* - Critical  
Care Conference, Doctors Hospital, Pinole,  
California, March 21, 1994

*Detox: The First Step to Recovery* - National  
Medical Enterprises Management Services Division  
Annual Conference, Colorado Springs, Colorado,  
October 13, 1993

*Substance Use and Substance Induced Organic  
Mental Disorders* - National Medical Enterprises  
Management Services Division Annual Conference,  
Colorado Springs, Colorado, October 12, 1993

*Dual Diagnosis in the Inpatient Setting* -  
Professional Seminar, Doctors Hospital, Pinole,  
California, September 27, 1993

*Depression and Strokes* - Brookside Hospital,  
San Pablo, California, March 03, 1993



*Drug Interactions in the ICU - Clinical Care  
Rounds, Doctors Hospital, Pinole, California,*

March 1992

*Overview of Sleep Disorders - Grand Rounds,  
Doctors Hospital, Pinole, California, January  
1992*

*Benzodiazepines: Uses and Abuses - Grand  
Rounds, Brookside Hospital, San Pablo,  
California, May 1991*

*Sleep Disorders in Schizophrenia - Quarterly  
Medical Staff Meeting, East Bay Hospital, March  
1990*

*Afro-Centricity in Psychology - Grand Rounds,  
San Francisco General Hospital, San Francisco,  
California, 1987*

*Geriatric Psychiatry - University of Southern  
California, 1982*

Professional Affiliations:

California Medical Association

Northern California Psychiatric Society

American Society of Addiction Medicine

American Psychiatric Association

Black Psychiatrists of America

American Neuropsychiatric Association

American Psychological Association

Clinical Professional Activities:

Scientific Committee, International Academy of Law  
and Mental Health, June, 2004

Physicians' Advisory Committee, Alameda Contra  
Costa Medical Association, Oakland, California,  
1993 to 1995

Physicians' Advisory Committee, Doctors  
Hospital, Pinole, California, 1991 to 1996;  
Chairman, 1994 to 1995

Medical Privileges Committee, Doctors Hospital,

Pinole, California, 1993 to 1996

Board of Directors, Solano Park Hospital, Fairfield,  
California, 1993 to 1994

Board of Directors, East Bay Hospital, Richmond,  
California, 1992 to 1993  
Chief of Staff, East Bay Hospital, Richmond,  
California, 1992

Chairman, Medical Executive Committee, East  
Bay Hospital, Richmond, California, 1992  
Allied Health Committee, Doctors Hospital,  
Pinole, California, 1992

Pharmacy & Therapeutics Committee, Doctors  
Hospital, Pinole, California, 1992

Professional Activities Committee, East Bay  
Hospital, Richmond, California, 1991

Psychiatry Committee, Chairman, East Bay  
Hospital, Richmond, California, 1990

Honors:

Outstanding Professor Award, Goodrich Program,  
Department of Public Policy, University of  
Nebraska at Omaha, 1993

National Medical Enterprises' Outstanding  
Medical Director for Psychiatric, Rehabilitation  
and Recovery Hospitals, 1992

Chief of Staff Award for Outstanding Service,  
East Bay Hospital, Richmond, California, 1992

Publications:

Abueg, Woods, Watson: *Disaster Trauma; Cognitive-  
Behavioral Strategies in Crisis Intervention*: Second  
Edition, Guilford Press, New York and London; pages  
273-290

FORENSIC PRACTICE:

Consultant to the Victims' Assistance Program,  
State Board of Control, State of California,  
Sacramento, California, 1994 to 2001

Medical Examiners Panel, San Francisco

County, Marin County and Contra Costa County  
Superior Courts, 1983 to Present

Psychiatric Consultant to Civil, Criminal and  
Appellate Judicial Proceedings Nationally, 1981  
to Present

Professional Lectures:

*Demystifying Emotional Damages Claims*, Paul,  
Hastings, Janofsky & Walker, San Francisco,  
California, January 15, 2002

*An Introduction To Multi-Axial Assessment and  
DSM-IV*, Second National Seminar on Mental Illness  
and the Criminal Law, Miyako Hotel, San Francisco,  
California, September 7 - 10, 2000

*Psychiatric Manifestations of Medical Disorders*,  
Second National Seminar on Mental Illness and the  
Criminal Law, Miyako Hotel, San Francisco,  
California, September 7 - 10, 2000

*An Introduction To Multi-Axial Assessment and  
DSM-IV*, First National Seminar on Mental Illness and  
the Criminal Law, Radisson Hotel, Washington, D. C.,  
August 6 - 9, 1999

*Psychiatric Manifestations of Medical Disorders*,  
First National Seminar on Mental Illness and the  
Criminal Law, Radisson Hotel, Washington, D. C.,  
August 6 - 9, 1999

*The Kenya/Tanzania Embassy Bombings: When Forensic  
Science, Politics, And Cultures Collide -*  
International Academy On Law and Mental Health,  
Toronto, Quebec, Canada, June 17, 1999

*Research Collaboration Between East Africa and the  
United States*, World Psychiatric Association/Kenya  
Psychiatric Association, First Annual Conference,  
Nairobi, Kenya, May 24, 1999

*Trauma/Resiliency In East Africa Workshop*, World  
Psychiatric Association/Kenya Psychiatric  
Association, First Annual Conference, Nairobi,  
Kenya, May 23, 1999

*Mental Health Litigation and The Workplace,*  
Sponsored by: University of California Davis Health  
System, Division of Forensic Psychiatry, Department  
Of Psychiatry, and Continuing Medical  
Education, Silverado Country Club, Napa,  
California, March 6-7, 1998

*Psychological Disabilities: Charting A Course Under  
The ADA and Other Statutes,* Yosemite Labor and  
Employment Conference, Yosemite, California,  
February 21, 1998

*Current Trends in Psychiatry and the Law: Developing  
A Forensic Neuro-Psychiatric Team CLE,*  
Federal Public Defenders For The District Of Oregon,  
Portland, Oregon, January 23, 1998

*The Changing Picture of Habeas Litigation, The  
National Habeas Training Conference, New Orleans,  
Louisiana, August 21-24, 1997*

*Accommodating Mental Illness In The Workplace,*  
Employment Law Briefing, Orange County, July 31,  
1997

*Accommodating Mental Illness In The Workplace,*  
Employment Law Briefing, Palo Alto, California, July  
15, 1997

*Accommodating Mental Illness In The Workplace,*  
Employment Law Briefing, Morrison & Foerster, San  
Francisco, June 20, 1997

*Psychiatric Evaluations in the Appellate Process -*  
Emory University, Department of Psychiatry, Forensic  
Fellowship, Atlanta, Georgia, May 9, 1997

*So You Wait Until Discovery Is Over to Consult with  
a Psychiatrist? Can You Tell Me More About That? -*  
Morrison and Foerster Labor Law College,  
Los Angeles, California, April 19, 1997

*The Changing Cultural Perspectives in Forensic  
Psychiatry - San Francisco General Hospital Grand  
Rounds, San Francisco, California, February 13, 1997*

*Evaluation of an Elementary School Child:  
Criminal Competency and Criminal Responsibility*  
- Stanford University School of Medicine,  
Department of Psychiatry and Behavioral  
Sciences, Division of Child Psychiatry and Child  
Development, Grand Rounds, Palo Alto,

California, December 11, 1996  
*Forensic Psychiatry: Cultural Factors in Criminal Behavior, Malingering, and Expert Testimony* - The Black Psychiatrists of America Transcultural Conference, Dakar, Senegal, West Africa, November 13, 1996

*Dangerousness: Evaluation for Risk Assessment* - Grand Rounds, Department of Psychiatry, University of California at Davis, June 05, 1996

*Violence In The Workplace: A Psychiatric Perspective Of Its Causes and Remedies* - The Combined Claims Conference of Northern California, Sacramento, California, October 05, 1995

*Experts: New Ways to Assess Competency* - Neurology and Psychopharmacology - Santa Clara University Death Penalty College, Santa Clara, California, August 07, 1995

*Multiple Diagnostic Categories in Children Who Kill: Psychological and Neurological Testing and Forensic Evaluation* - The American College of Forensic Psychiatry 13th Annual Symposium, San Francisco, California, April 27, 1995

*Mock Trial: Client Competence in a Criminal Case: Testing the Limits of Expertise-The Psychiatrist's Opinion as Scientific, the Expert's Foundation As Sufficient* - The American College of Forensic Psychiatry 13th Annual Symposium, San Francisco, California, April 28, 1995

*The Use of Psychologists In Judicial Proceedings* - The California Attorneys for Criminal Justice/California Public Defenders Association Capital Case Seminar, Monterey, California, February 18, 1995

*Commonly Seen Mental Disorders in Death Row Populations* - The California Appellate Project, Training Session for Legal Fellows and Thurgood Marshall Investigative Interns, San Francisco, California, September 30, 1994

*Anatomy of a Trial* - Mock Trial Participant, The California State Bar Annual Convention, Anaheim, California, September 24, 1994

*Developing a Forensic Neuropsychiatric Team* - The American College of Forensic Psychiatry 12th

Annual Symposium In Forensic Psychiatry,  
Montreal, Quebec, May 06, 1994

*Responsibility in Forensic Psychiatry* -  
Department of Criminology Faculty Seminar,  
University of Nebraska at Omaha, April 16, 1994

*Attorney/Investigator Workshop: Brain Function*  
- The 1994 California Attorneys for Criminal  
Justice/California Public Defenders Association  
Capital Case Seminar, Long Beach, California,  
February 20, 1994

*Appellate and Habeas Attorney/Investigator  
Workshop: Evaluating Mental Health Issues in  
Post-Conviction Litigation* - The 1994 California  
Attorneys for Criminal Justice/California Public  
Defenders Association Capital Case Defense  
Seminar, Long Beach, California, February 19,  
1994

*Psychological Issues in Police Misconduct* -  
Police Misconduct Litigation, National Lawyers  
Guild, San Francisco, November 13, 1993

*Neuropsychiatry, Neuropsychology and Criminal  
Law* - Maricopa County Office of the Public  
Defender, Seminar on Investigation for  
Mitigation and Capital Cases, Phoenix, Arizona,  
June 02, 1993

*Working With Experts* - California Appellate  
Project, San Francisco, California, December 05,  
1993

*Forensic Psychiatry and Ethnicity* - Black  
District Attorneys Association, National  
Convention, 1991

**In Association With The National Institute of Trial  
Advocacy Training, Notre Dame University, South  
Bend, Indiana:**

New York University Law School, New York City, June  
14 - 17, 2001

University of North Carolina Law School, Chapel  
Hill, North Carolina, January 17 - 20, 2001

University of Houston Law School, Houston, Texas  
January 19 - 24, 2000

University of Tennessee Law School  
Knoxville, Tennessee, January 14 - 16, 1999

Atlanta, Georgia, August 27-30, 1998

University of Texas Law School, Austin, Texas, June  
25-28, 1998

Temple University School of Law, Philadelphia,  
Pennsylvania, January 29 -  
February 1, 1998

#### Professional Forensic Publications

"Psychiatry and Criminal Law", *Contra Costa Lawyer*,  
Volume II, No. 8, August 1998

*Mock Trial: Client Competence in a Criminal  
Case: Testing the Limits of Expertise - The  
Psychiatrist's Opinion as Scientific, The  
Expert's Foundation As Sufficient* - April 1995,  
Available from The American College Of Forensic  
Psychiatry on Audiotape

*Multiple Diagnostic Categories in Children Who  
Kill: Psychological and Neurological Testing  
and Forensic Evaluation* - April 1995, Available  
from The American College of Forensic Psychiatry  
on Audiotape

*Developing a Forensic Neuropsychiatric Team* -  
May, 1994, Available from The American College  
of Forensic Psychiatry on Audiotape

*Anatomy of a Trial* - September, 1994, Available  
from The California State Bar Association on  
Audiotape

#### Professional Affiliations:

American College of Forensic Psychiatry

American Academy of Psychiatry and The Law

The American College of Forensic Examiners

International Academy of Law and Mental Health

#### EDUCATIONAL, BUSINESS, & PROFESSIONAL DEVELOPMENT:

Consultant, Corporate Structure, Tostan, Non  
Governmental Organization, Theis, Senegal, March  
2004

Consultant to Vulcan Industries, Seattle,  
Washington, December 21, 2001 to March 2003

**Educational/Corporate Presentations**

*Toward Effective Retention Efforts: The use of  
narratives in understanding the experiences of  
racially diverse college students.* Narrative Matters  
2004, Fredericton, New Brunswick, Canada, May 21,  
2004

**In Association with the Council on Education in  
Management, Charlotte, North Carolina**

*Accommodating Psychiatric Disabilities: Avoiding the  
Legal Pitfalls of the ADA.* H.R. Conference, Palm  
Springs, California, March 28<sup>th</sup>, 2003

**In Association with Matthew Bender Legal Publishing,  
New York:**

*Psychiatric Disabilities and California Workplace  
Requirements,* With the Bar Association of San  
Francisco, San Francisco, April 30, 1999

*Psychiatric Disabilities Under the Americans With  
Disabilities Act: Without Pretrial Strategy,*  
Atlanta, Georgia, November 12, 1998

*Psychiatric Disabilities Under the Americans With  
Disabilities Act: Pretrial Strategy,* Los Angeles,  
California, May 28, 1998

*Cognitive Assessment and Curriculum,* Department of  
Educational Policy, Urban Leadership Program,  
Graduate School of Educational Leadership,  
California State University at Sacramento, September  
27, 2002

**THE CRITICAL MOMENTS GROUP**

"Part I - Responding Creatively to Cultural  
Diversity through Case Stories" and "Part II -  
Strategies and Challenges for a Campus-wide  
Diversity Project: Models of Integrating Critical



Moments", 14<sup>th</sup> Annual Conference on Race and Ethnicity in American Higher Education, Seattle, Washington, June 2, 2001

"Teaching Complex Case Stories," Faculty Development, Loras College, Dubuque, Iowa, February 28, 2001

"Critical Moments: Creating a Diversity Leadership Learning Community", 13<sup>th</sup> Annual National Conference on Race and Ethnicity in American Higher Education (sponsored by the University of Oklahoma's Southwestern Center for Human Relations Studies), Santa Fe, New Mexico, June 3, 2000

"Critical Moments: Practicum on Teaching Diversity Through Case Stories," 13<sup>th</sup> Annual National Conference on Race and Ethnicity in American Higher Education (sponsored by the University of Oklahoma's Southwestern Center for Human Relations Studies), Santa Fe, New Mexico, June 3, 2000

"Improving Undergraduate Education: Teaching and Learning in the Context of Cultural Differences," The Washington Centers for Improving the Quality of Undergraduate Education, 13<sup>th</sup> Annual Conference, Seattle, Washington, February 25, 2000

"Critical Moments: Deepening Our Understanding of Cultural Diversity through Critical Analysis, Effective Interviewing, Case Writing, and Case Teaching," The Washington Center, Evergreen State College, Olympia, Washington, November 11-12, 1999

"Teaching Complex Issues with Case Studies: A Workshop for Faculty and Graduate Teaching Assistants," University of Nebraska at Lincoln's Teaching and Learning Center and Critical Moments Project, September 7, 1999

"Critical Moments: Writing the Stories of Diverse Students," Washington Center for Improving the Quality of Undergraduate Education Workshop for College and University Faculty, Administrators, Staff and Students, Evergreen State College, Bothell, Washington, August 23 - 27, 1999

"Critical Moments: A Case Study Approach for Easing the Cultural Isolation of Under-represented College Students," Presented at "Transforming Campuses Through Learning Communities," National Learning Communities Conference, Seattle, Washington, May 20 - 23, 1999

George W. Woods, Jr., M.D.  
Curriculum Vita  
Page 15

Contextualism and Multi-cultural Psychology -  
Graduate Seminar University of Nebraska,  
Omaha, Nebraska, April 01, 1993

Curriculum and Developmental Stages - North  
Central Educational Research Lab, Northwestern  
University, July 1992

PUBLICATIONS:

Critical Moments: Responding Creatively to Cultural  
Diversity Through Case Stories; Third Edition, Diane  
Gillespie, Ph.D. and George Woods, Jr., M.D., 2000

Offices:

Oakland, Atlanta, Seattle, San Antonio

1-866-646-0509

gwwoods@comcast.net, gwwoods@concentric.net

**This Curriculum Vita Updated December 23, 2004**

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 63: Supplemental Declaration of Ruben C. Gur, Ph.D.**

## **SUPPLEMENTAL DECLARATION OF RUBEN C. GUR, Ph.D.**

I, Ruben C. Gur, Ph.D., declare as follows:

1. On December 30, 2004, I provided the attorneys for Mr. Donald Beardslee a declaration summarizing my conclusions regarding Mr. Beardslee's central nervous system deficits, including significant brain damage, based on my review of records, the results obtained in an earlier neuropsychological evaluation, as well as neuropsychological testing and a clinical interview that I conducted at San Quentin State Prison in December 2004. Mr. Beardslee's attorneys have asked me to review a letter from Dr. William J. Lynch to the district attorney, and assess the validity of Dr. Lynch's critique of the clinical conclusions and reasoning stated in my declaration. This declaration supplements my December 30 declaration.

2. Both Dr. Lynch and I are in agreement that structural and functional imaging, as would be available with a MRI, functional MRI and PET, would be valuable in definitively determining the damage to Mr. Beardslee's brain and impairment of his mental functioning. Based on my review of the neuropsychological test results, my clinical observations, and witnesses' reports of Mr. Beardslee's behavior and functioning before, during, and after the crimes for which he was sentenced to death, I believe that such imagining would demonstrate the neural substrates for the deficits that I described in my December 30 declaration.

3. I disagree with Dr. Lynch's suggestion that in reaching the conclusions stated in my December 30 declaration I used a "brain map" as "a substitute for the presentation of specific test results." (Dr. Lynch's Letter, dated January 6, 2005, page 4.) To the contrary, I arrived at my conclusions based on standard protocols for neuropsychological assessment, and the consideration of congruent clinical data, including the results of extensive neuropsychological testing, clinical observations, and accounts of his behavior throughout his life.

4. The testing that I reviewed or personally administered included the following: the Halstead-Reitan Neuropsychological Battery (Booklet Category Test, Finger Oscillation Test, Seashore Rhythm Test, Speech Sounds Perception Test, and Tactual Performance Test); the California Verbal Learning Test, Controlled Oral Word Test, Grooved Pegboard, Florida Affect Battery, Paced Auditory Serial Addition Test, Rey Osterreith Complex Figure (with thirty minute

delay), Stroop, Trailmaking Test, University of Pennsylvania Smell Identification Test (screening), Verbal Concept Attainment Test, Weschler Adult Intelligence Scale – Revised, and the Wide Range Achievement Test – III. In addition, I administered several computerized tests that were developed by me or under my supervision at the University of Pennsylvania, and under the auspices of the National Institutes of Health. As with the other clinical instruments listed above, these tests all have been validated by peer reviewed publication in leading professional journals used by researchers and clinicians in the fields of neuropsychiatry and neuropsychology. These tests consisted of the computerized neurocognitive scan (Gur RC, Ragland JD, Moberg PJ, Turner TH, Bilker WB, Kohler C, Siegel SJ, Gur RE. “Computerized Neurocognitive Scanning: I. Methodology and validation in healthy people.” Neuropsychopharmacology, 2001, 25, 766-776; Gur RC, Ragland JD, Moberg PJ, Bilker WB, Kohler C, Siegel SJ, Gur RE. “Computerized Neurocognitive Scanning II: The Profile of Schizophrenia.” Neuropsychopharmacology, 2001, 25, 777-788), which includes validated measures of abstraction and mental flexibility, attention and working memory, verbal spatial and face memory, language and spatial as well as sensorimotor abilities (e.g., Glahn DC, Gur RC, Ragland JD, Censits DM, Gur RE. “Reliability, performance characteristics, construct validity, and an initial clinical application of a visual object learning test (VOLT)” . Neuropsychology, 1997, 11, 602-612; Ragland JD, Turetsky BI, Gur RC, Gunning-Dixon F, Turner T, Schroeder L, Chan R, Gur RE. “Working memory for complex figures: an fMRI comparison of letter and fractal n-back tasks.” Neuropsychology, 2002, 16, 370-379; Kurtz MM, Ragland JD, Moberg PJ, Gur RC. “The Penn Conditional Exclusion Test: A New Measure of Executive-function with Alternate Forms for Repeat Administration.” Archives of Clinical Neuropsychology, 19, 191-201, 2004; Erwin RJ, Gur RC, Gur RE, Skolnick BE, Mawhinney-Hee M, Smailis J. “Facial emotion discrimination: I. Task construction and behavioral findings in normals.” Psychiatry Research, 1992, 42, 231-240; Gur RC, Erwin RJ, Gur RE, Zwi AS, Heimberg C, Kraemer HC. “Facial emotion discrimination: II. Behavioral findings in depression.” Psychiatry Research, 1992, 42, 241-251; Heimberg C, Gur RE, Erwin RJ, Shtasel DL, Gur RC. “Facial Emotion Discrimination: III. Behavioral findings in schizophrenia.” Psychiatry Research, 1992, 42, 253-265; Kohler CG, Turner TT, Bilker WB,

Brensinger C, Siegel SJ, Kanes, SJ, Gur RE, Gur RC. "Facial emotion recognition in schizophrenia: Intensity effects and error pattern." American Journal of Psychiatry, 2003, 160, 1768-1774; Kohler CG. Turner TH. Gur RE. Gur RC. "Recognition of facial emotions in neuropsychiatric disorders." CNS Spectrums, 2004, 9:267-274). These tests have been validated cross-culturally, translated to foreign languages and used in several countries (e.g., Habel U, Gur RC, Mandal MK, Salloum JB, Gur RE, Schneider F. "Emotional processing in schizophrenia across cultures: standardized measure of discrimination and experience." Schizophrenia Research, 2000, 42, 57-66; Silver, H, Shlomo, N, Turner, T, Gur, RC. "Perception of happy and sad facial expressions in chronic schizophrenia: Evidence for two evaluative systems." Schizophrenia Research, 2002, 55, 171-177; Silver H, Feldman P, Bilker WB, Gur RC. "Working memory deficit as a core neuropsychological dysfunction in schizophrenia." American Journal of Psychiatry, 2003, 160, 1809-1816; Kryspin-Exner I, Gur RC, Hoheisel B, Klein M, Six N. "Neurobehavioral Probes: Adaptierung und Erweiterung von Verfahren zur computergestützten neuropsychologischen Diagnostik." Verhaltenstherapie und Verhaltensmedizin, 2003, 24, 27-51).

5. Dr. Lynch expresses a preference for relying on the performance of timed tasks to assess possible malingering. While we have assessed that aspect and ruled out malingering based on careful assessment of timed performance, I should point out that the approach Dr. Lynch describes is somewhat simplistic and by no means a universal clinical approach. A competent examiner would look to a several indicators, including the attitude and effort expressed by the examinee, internal validity scales, the congruence of scores, and clinical presentation. Dr. Lynch has not expressed any reason for doubting the reliability of these factors to support my conclusion that the results of the previous neuropsychological examinations and my test battery accurately represent and validly measure Mr. Beardslee's neuropsychological functioning. Mr. Beardslee exhibited no evidence of malingering on the measurements specifically designed to detect such testing behavior. During my testing of Mr. Beardslee, he expended a strong effort toward completing the tests. At no time did I observe Mr. Beardslee intentionally attempting to perform below his abilities or malingering in any way. In addition, Mr.

Beardslee's consistency of performance on the test batteries demonstrates their validity. He scored within normal limits on several measuring devices that are designed to assess left hemisphere functioning. Similarly, the consistency of his scores on several different instruments that assess right hemisphere functioning not only demonstrate any lack of malingering or exaggeration, but also validate the conclusion of dysfunction in this region. Finally, the measurement of response time indicated that in most tests he sacrificed speed for accuracy, a pattern opposite to that characterizing malingerers. In short, I detected no evidence of malingering or exaggeration of deficits.

6. One of the tools that I used in reaching my conclusions was the topographic display of neuropsychological data that I reviewed. The methodology – developed through funding from the National Institute of Mental Health and with participation of leading experts in neuropsychology – has been published and validated in peer-reviewed journal articles since 1988 (Gur RC, Trivedi SS, Saykin AJ, Gur RE. “Behavioral imaging” - a procedure for analysis and display of neuropsychological test scores: I. Construction of algorithm and initial clinical evaluation. Neuropsychiatry, Neuropsychology and Behavioral Neurology, 1988, 1, 53-60; Gur RC, Saykin AJ, Blonder LX, Gur RE. “Behavioral imaging”: II. Application of the quantitative algorithm to hypothesis testing in a population of hemiparkinsonian patients. Neuropsychiatry, Neuropsychology and Behavioral Neurology, 1988, 1, 87-96; Gur RC, Saykin AJ, Benton A, Kaplan E, Levin H, Kester DB, Gur RE. “Behavioral imaging”: III. Inter-rater agreement and reliability of weightings. Neuropsychiatry, Neuropsychology, and Behavioral Neurology, 1990, 3, 113-124; Blonder LX, Gur RE, Gur RC, Saykin AJ, Hurtig HI. “Neuropsychological functioning in hemiparkinsonism.” Brain and Cognition, 1989, 9, 177-190). The technology permits clinical professionals to effectively gauge the regional distribution of deficits as reflected in standard neuropsychological tests, and this is helpful to diagnose, treat, and study a variety of mental health conditions, including Parkinson's Disease, Alzheimer's Disease, Schizophrenia, and neurodevelopmental disorders. Dr. Lynch does not identify any basis for suggesting that the topographic display is merely “an attractive picture” that provides no reliable evidence of actual brain impairment. While there was some debate in the literature on specific aspects of the

algorithm (see Gur RC, Saykin AJ, Muenz LR, Trivedi S, Gur RE. Response to Yeo et al.'s critique of behavioral imaging." Neuropsychiatry, Neuropsychology, and Behavioral Neurology, 1990, 3, 304-312), I am aware of no literature, study, or analysis that suggests that this methodology is unreliable or invalid.

7. Attorneys for Mr. Beardslee have asked me to provide an image of a "normal" brain for comparison purposes. A comparison of the behavioral image of Mr. Beardslee's brain, attached to this declaration as Appendix A, with the image of a brain without deficits, attached as Appendix B, demonstrates the locus and severity of Mr. Beardslee's impairments. As depicted by these images, Mr. Beardslee's right hemisphere is severely compromised and functions at a level markedly below that of a brain without the deficits identified by the neuropsychological testing.

8. Dr. Lynch apparent belief that neuropsychological testing may not appropriately be used as the basis of opining the location of particular deficits is quite baffling in the context of modern neuropsychology. (Letter dated January 6, 2005, page 2.) The utility of neuropsychological measurements to reliably and validly detect the presence, lateralization, localization, severity, and acuteness of brain impairments is supported by the neurosurgical, neurologic, and neuroradiologic data underlying neuropsychological battery norms. This is no longer at issue in neuropsychological practice.

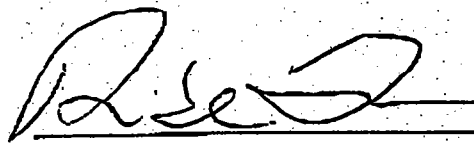
9. As I explained in the December 30 declaration, Mr. Beardslee's deficits likely have a congenital, genetic, or biological etiology. Dr. Lynch suggests that the functional impact of such neurodevelopmental deficits should be manifested by the same signs and symptoms as those commonly encountered in patients in occupational or rehabilitative therapy programs who have suffered acquired brain damage as the result of "strokes, brain tumors, or penetrating head injuries." (Letter dated January 6, 2005, pages 3-4.) The types of neurological insults to which Dr. Lynch refers may produce more dramatic alterations in daily functioning and behavior than do neurodevelopmental impairments. The insidious impact of these latter impairments allow for functional adaptation by way of compensatory strategies that may mask or render more subtle motoric and visual-spatial deficiencies. That said, Dr. Lynch does not identify the data that he



believes rules out all signs of functional impact associated with Mr. Beardslee's brain damage. By contrast, the descriptions of Mr. Beardslee in his childhood and adolescence, as well as previous clinical descriptions of him confirms that he had an odd gait, was markedly less athletically proficient than his peers and younger brother, and exhibited left side dysmorphology.

10. Overall, Dr. Lynch's letter does not reflect his connection with a broad "neuropsychological community" or identify the "commonly accepted principles of evaluation and assessment . . . of actual brain damage" by which he has measured the conclusions in my December 30 declaration. Nor is his name represented among the contributors to the clinical or research literature in this filed. I therefore do not know the referents that he believes my December 30 declaration fails to reflect. (Letter dated January 6, 2004.) As noted above, however, he does express faith in the reliability of MRI and other imaging techniques. I am confident that such procedures would corroborate the results achieved with the topographic display on which I relied, as well as the findings I made in the December 30 Declaration.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States and the State of California on January 9, 2005.



RUBEN GUR, Ph.D.

## **APPENDIX A**

MAIN

File

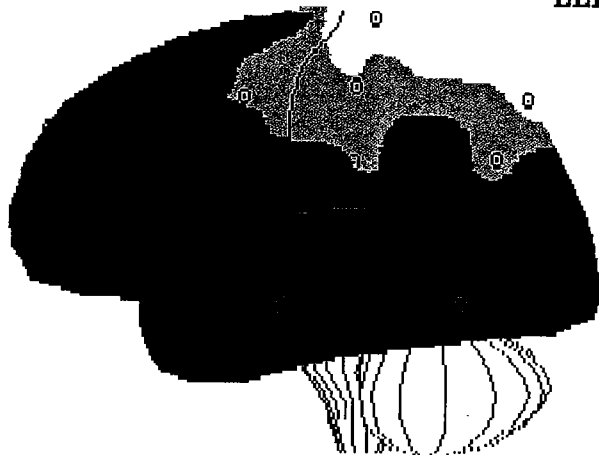
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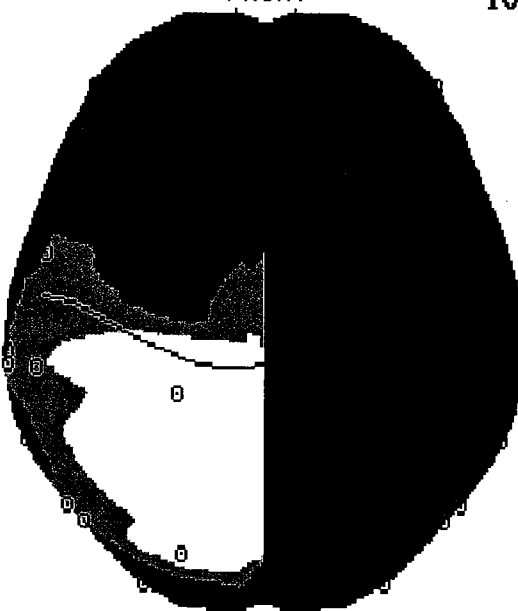
Weight Table: AVERAGE

Note:

FRONT

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RIGHT



-1.10



## **APPENDIX B**

MAIN

File

Edit

Select

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LEFT



BI Version P2.35

I.D. normal\_05

Weight Table: AVERAGE

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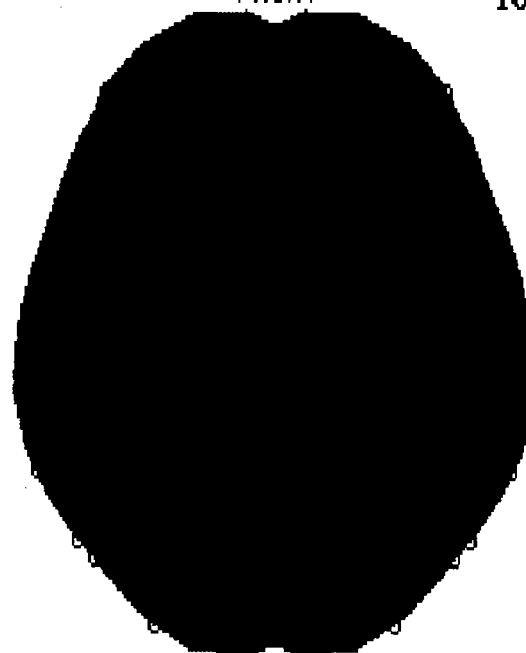
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**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 64: Letter by Dr. Ewald Moser, Ph.D.**

Wien, January 4, 2004

The Honorable Arnold Schwarzenegger  
Governor of the State of California  
Office of the Governor  
Sacramento, California 95814

Re: Petition for Executive Clemency for Donald Beardslee

Dear Governor Schwarzenegger:

I understand that you currently are considering whether to commute Mr. Beardslee's death sentence based, in part, on evidence from Dr. Ruben Gur concerning Mr. Beardslee's brain damage. I write to offer my opinions on Dr. Gur's expertise.

I am a Professor of Medical Physics and Biophysics at the Medical University of Vienna, Vienna, Austria and a licensed Medical Physicist. I am the scientific director of the Vienna MR Centre of Excellence and also an Adjunct Professor of Physics in Psychiatry at the department of Psychiatry, University of Pennsylvania Medical Centre, Philadelphia, PA (USA). My research specialities are functional and metabolic human brain studies at high magnetic fields (fMRI, MRSI), running a 3 Tesla research system since 1996, the only one in Austria until the summer of 2004.

I have known Professor Ruben C. Gur since 1995 when we met at an international scientific meeting in France. We have been in frequent contact since then and have performed joint research projects, both in Austria (where I am the principal investigator) and in the United States (where I am a consultant).

Professor R.C. Gur has an excellent reputation in the field of brain research, using both Positron Emission Tomography (PET) and Functional Magnetic Resonance Imaging (fMRI) techniques, and I very much value his professional expertise as a psychologist.

As a Medical Physicist and not a Psychologist, I am unfortunately not in a position to review Prof Gur's findings regarding Mr Beardslee's mental condition. I can however confirm that Prof Gur is a scientist of the highest caliber who ranks amongst the most senior psychologists internationally, and is a man of great personal integrity. At the forefront in this field, he would appear to be one of most qualified professionals to offer judgment in this case.

Sincerely,



Ewald Moser, PhD.

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 65: Letter by Dr. Frank Schneider, M.D., Ph.D.**





UNIVERSITÄTSKLINIKUM  
**AACHEN**

Klinik für Psychiatrie  
und Psychotherapie

Direktor:

Univ.-Prof. Dr. med. Dr. rer. soc. Frank Schneider

MEDIZINISCHE FAKULTÄT  
**RWTH AACHEN**

Universitätsklinikum Aachen · D 52074 Aachen

Mein Zeichen:

Telefon: +49-241 80 89 633

Telefax: +49-241 80 82 401

e-mail: [psychiatrie@ukaachen.de](mailto:psychiatrie@ukaachen.de)

Homepage: [www.psychiatrie.ukaachen.de](http://www.psychiatrie.ukaachen.de)

The Honorable Arnold Schwarzenegger  
Governor of the State of California  
Office of the Governor  
Sacramento, California 95814  
U.S.A.

Jan 3, 2004

**Re: Donald Beardslee's Petition for Executive Clemency**

Dear Governor Schwarzenegger:

I write to urge you to commute Mr. Beardslee's death sentence. The clemency request is supported by extensive evidence from Dr. Ruben Gur documenting Mr. Beardslee's brain damage.

Dr. Gur is a renown expert in the area of brain dysfunction, particularly with respect to brain abnormalities found in persons suffering from schizophrenia.

Dr. Gur's report is accompanied by a behavioral image, which was created by a valid, reliable, and medically accepted technology. The image fully corroborates Dr. Gur's conclusions about Mr. Beardslee's impairments.

The neuropsychological results reveals that Mr. Beardslee has an abnormal brain, with remarkable deficits to his right hemisphere. Such impairments significantly impair a person's ability correctly to perceive, interpret, and respond appropriately, particularly in complex situations. Mr. Beardslee's deficits further increase the risk of dissociative episodes in stressful situations. His ability to display emotions similarly is compromised, increasing the likelihood that Mr. Beardslee's flat affect might be mistaken for being 'remorseless.'

Regardless of a person's moral views on the death penalty, all persons should agree that executing those with brain damage serves no legitimate societal purpose. Based on the

Universitätsklinikum Aachen (UKA)  
Anstalt des öffentlichen Rechts  
Sitz Aachen  
Pauwelsstraße 30 · D 52074 Aachen

Aufsichtsratsvorsitzende:  
Christa Hermann

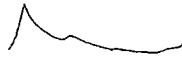
Vorstandsvorsitzender:  
Univ.-Prof. Dr. Henning Saß

Kaufmännischer Direktor:  
Detlef Klimpe

Banken:  
Sparkasse Aachen  
(BLZ 390 500 00) 13004015  
Deutsche Bank  
(BLZ 390 700 20) 1119999

medical and scientific evidence, a failure to commute Mr. Beardslee's sentence will result in the execution of someone whose criminal actions were controlled by his severe brain damage.

Sincerely,

A handwritten signature in black ink, appearing to be 'Frank Schneider', with a stylized, slightly wavy line.

Frank Schneider, MD, PhD  
Professor of Psychiatry  
Director, Department of Psychiatry  
RWTH Aachen University

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 66: Letter by Mark Baldwin**

10 Meyrick Street  
Hereford  
HR4 0DY  
United Kingdom

January 6, 2005

The Honorable Arnold Schwarzenegger  
Office of the Governor  
State Capitol  
Sacramento, CA 95814

**RE: Donald Beardslee - Appeal for Clemency**

Dear Governor Schwarzenegger:

This is not an easy letter for me to write. I am painfully aware that there is little I can say to stop the execution of Donald Beardslee, but I would like to try to assure you that his life is worth saving. Donald has always been exceptionally kind to me, and it upsets me to think that I will not be able to repay in some small way the kindness and friendship that he has shown towards me over the past thirteen years. It is for this reason that I write to respectfully ask you please seriously to consider this appeal for clemency.

My partner, Catherine Preece, and I have been corresponding with Donald for the past thirteen years. We hold Donald in the highest regard as a friend, and over the past thirteen years, I have come to love him like a brother. It is a challenge to express my feelings to a stranger in such a public manner, but Donald's friendship means so much to me that I feel I must try. I have suffered from a serious illness since I was eleven years old. Donald's kindness towards me over the years has helped me to deal with my illness. Whenever I am going through a particularly bad phase, I feel happier knowing that Donald is there to discuss it with me.

Donald helps me a great deal more than I have ever been able to help him. If this execution goes ahead, I cannot describe how much I will miss his kind words. From a purely selfish point of view, for me the loss of my friend Donald will be irreplaceable. Outside of my family, no other person in my life has shown me the same sort of kindness that Donald has. Donald attends to me with consideration and kindness, even in the face of his own difficulties. Donald has never sought publicity or thanks for his efforts. That is true friendship, and it is something I feel is worth fighting for.

I think that Donald and I understand certain aspects of each other's lives and have a genuine empathy for one another. Donald had two severe head injuries when he was younger, first at the age of eighteen when he was injured in a car accident, and a more severe injury in his twenties when a huge tree landed on his head and it was thought that he would die. Donald's head injuries were major, and left him with balance and other serious problems. Before these injuries,

Donald's father died from cancer right before his eleventh birthday, and this had a devastating effect on his life.

Similarly, my grandmother, whom I loved dearly and who lived with my family for some years, died from cancer when I was eleven years old, the same time that my illness began. Donald often relates to me his happy memories of his childhood when his father was still alive, and he is proud of his father's service as a fire fighter and the many strong personal qualities that he had. I can only wonder how different things could have been had his father not died so early in Donald's life. This bond of empathy explains why Donald and I have been able to form a true and meaningful friendship.

Even during the most difficult times in Donald's appeal process, he remained eager to offer me his support in any way that he could. It is obvious that it frustrates him deeply that he cannot help me more. When Donald was nearly scheduled for execution this past November 2004, he was full of concern that the news would affect Catherine and me and that it would have a detrimental effect upon my health. He spent the short time left to him not selfishly worrying about his own needs, but rather ensuring that our Christmas card was sent and that he finished the final installment of the story that he has been writing for us over the years.

Donald was also a great comfort to me when my grandfather moved back to my home to share his last months with his family. I found it very hard to cope with the fact that my grandfather died in my arms. Donald helped me to come to terms with this very traumatic event, and our relationship grew stronger because of his guidance.

If he is executed it would destroy the love from Donald that is so important to me. It is also clear that Donald's kind nature is not reserved just for me. He is clearly able to form friendships with a number of the other inmates. Having seen some of the gifts of artwork that he receives from his friends on death row, it is clear that he is on very good terms with his fellow inmates. He has asked us if he can use artwork that we have sent him to create greeting cards for his friends in prison, and likewise, some of the other inmates have produced artwork for him to pass on to us. He sends us letters on paper decorated by an inmate who is a friend of his. He often mentions other inmates putting aside food items for him to create particular dishes. He fixes the printer ribbons for the typewriters of other inmates.

He also often writes to us enthusiastically about his visits from Reverend Harrell. Donald clearly regards Reverend Harrell like a member of his family rather than just a Minister, and he is enormously grateful to her not just for spiritual guidance but also for the genuine sense of friendship that he has with her. Donald has a strong spiritual life, and we often have discussions of a religious nature in our letters.

Donald is also very enthusiastic about learning new things about the world, and frequently asks me about topics that interest him. I explain to him at great length how things work and why things happen, and Donald is very appreciative of the education. Sadly, as he has grown older his ability to retain this information is not what it used to be, or perhaps he asks me to research the same things more than once because he cannot think of anything else to ask.

Donald's continuing presence in my life is an important contribution. His empathy is genuine. In return for our letters, Donald has offered me a true and enduring friendship. He behaves towards us as if we were his brother and sister as well as his close friends. Donald wrote in June: "for the most part after he (Donald's father) died, I felt somewhat like a stranger in the family... with the two of you, I have been closer and we have talked of more than I ever did with any of the family." Donald misses the way that his family was before his father died, and I think that in some small way we have been able to be like a family for him. I think that Donald has opened up to us a great deal about his feelings, particularly about his father's death, and how that affected him as a child, and I have been encouraged by him to open up about my grandmother and how her slow and lingering death from cancer affected me. I believe that Donald has leapt at the challenge of befriending me as one of the very few opportunities open to him to give something back, however small, to the world.

I know that my world would be a much worse place, a much smaller place, and an intolerably lonely and isolated place if Donald was not in it, and it saddens me more than I can say, because he means so much to me as a friend. Donald has brought more into my life than he has asked from me, much more.

I am writing this in the Christmas season, and the message of Christ, full of hope, compassion and goodwill to all of our fellow men is uppermost in my mind. I truly hope that you will find it in your heart to consider the merits of sparing the life of Donald Beardslee.

I am very grateful to you for considering my friend Donald's clemency appeal.

Sincerely,

*Mark Baldwin*

Mark Baldwin

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 67: Letter by Mr. and Mrs. Baldwin**

10 Meyrick Street  
Hereford  
HR4 0DY  
United Kingdom

January 6, 2005

The Honorable Arnold Schwarzenegger  
Office of the Governor  
State Capitol  
Sacramento, CA 95814

Dear Governor Schwarzenegger:

We are writing to you in the Christmas season to appeal for clemency on behalf of Donald Beardslee, who is at present awaiting execution. We ask that his sentence be commuted to life imprisonment. Because it is Christmas, we are thinking a lot about the reason we are celebrating Christmas and the message of kindness and goodwill that Christmas means to all of us.

For the last thirteen years Donald has been corresponding with our son, Mark. Our son struggles with a serious illness, and we can see how hard he has worked with Catherine to prepare their letters to help Donald, despite these problems in his life, and how kind Donald has been to Mark in this difficult time in his own life.

Over the years that Mark and Donald have been corresponding, Donald has always been supportive and encouraging to Mark. We cannot stress how much all of this means to Mark, and therefore to us, his parents.

Yours sincerely,

*Colin Baldwin*

*Gillian Baldwin*

Mr. and Mrs. Baldwin



**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 68: Letter by Catherine Preece**

10 Meyrick Street  
Hereford  
HR4 0DY  
United Kingdom

January 6, 2005

The Honorable Arnold Schwarzenegger  
Office of the Governor  
State Capitol  
Sacramento, CA 95814

**RE: Donald Beardslee - Appeal for Clemency**

Dear Governor Schwarzenegger:

I am writing to respectfully ask you to spare Donald Beardslee's life. My partner Mark Baldwin and I were matched as pen pals with Donald Beardslee thirteen years ago through an organization called Lifelines, which finds pen pals for people on death row. Corresponding with a death row prisoner was at first an unlikely choice for us, since we strongly identify with crime victims: my brother's young niece suffered a violent assault; my partner Mark's elderly grandfather was burgled and never fully recovered from this frightening experience; a disabled friend of mine was viciously attacked in his own home last winter; and some years ago Mark acted to prevent a violent assault upon a young woman.

Nevertheless, we felt it would be worthwhile to get a viewpoint from the other side and to try to find out what sort of people end up on death row. We did not expect the correspondence to last very long, as we are very cynical people and expected pleas for money. This was not the case with Donald Beardslee. On the contrary, what started out as a tentative correspondence has turned into an enduring friendship.

We started writing to Donald in October of 1991, and were pleasantly surprised to find Donald to be somebody concerned with the problems of others rather than someone who would try to manipulate others to his own cause. Our correspondence has continued for the past thirteen years during which time we have built up a very real and enduring friendship with Donald. He has never asked anything of us in terms of financial assistance or help with his case, and indeed, it was us who initiated assisting with this clemency appeal.

Over the years he has become more like a kindly brother than a pen pal. Donald has written lengthy letters to us on a consistent monthly basis for the last thirteen years. He also writes fictional stories just for us, and makes painstaking artwork for us. He has always shown an interest in my life and values my opinions. He has always been supportive and encouraging towards me personally.

As soon as Donald felt he was able to trust us, he was very open and honest about his life history. Donald had a lot of problems in his own life leading up to his incarceration, yet he seems more concerned with our problems than with his own. We are sure that Donald would have responded very well to consistent counseling treatment if he had received it. In the many letters we have received from Donald in the past thirteen years, he consistently comes across as a thoughtful, compassionate, considerate person. He has a deep and spiritual faith, yet he is tolerant of other people's views. He is also full of good humor despite the situation that he has found himself in.

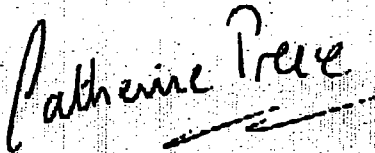
Donald is also a hard worker. He often talks of the jobs he used to have and how much he enjoyed them and the pride he took in doing a good job. The only time I recall him complaining about being on death row was when he bemoaned the fact that he was not able to work.

Donald's kindness is perhaps best highlighted in the way in which he dealt with the news of his impending execution. In October 2004, when the prosecution was seeking an execution date for November, Donald's main concern seemed to be how he was going to break this upsetting news to us in as sensitive a manner as possible. His next priority was to make us a Christmas card and to finish the story that he had been working on for us, so that he would not be neglecting our friendship at Christmas, even though he was sure he would no longer be alive to share the season of goodwill with us. He thought this would be the last correspondence he would be able to send to us.

If anyone has proved himself worthy of mercy, that most Christian of ideals, it is Donald Beardslee. Donald's friendship is invaluable to me. Donald is a person who is able to put back some good into the world. He has shown that he cares for other people and can reach out and help others. He has made and can still make a positive contribution in this life.

Thank you for taking the time to read my letter.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Preece". The signature is written in dark ink and is positioned above a horizontal line.

Catherine Preece

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 69: Excerpts from the Preliminary Hearing in *People v. Cleo Frank Rutherford*, reporters' transcript pages 413-415, 420-423, 479, 495-496, 697, 699, 708, 744, 829-830, 841, 904-905, 1230, 1256**

COPY

VOLUME VI

(ENDORSED)

FILED

MAR 1 1982

MARVIN CHURCH, County Clerk  
By ANN HARRIS  
DEPUTY CLERK

IN THE MUNICIPAL COURT, SOUTHERN JUDICIAL DISTRICT  
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

THE PEOPLE OF THE )  
STATE OF CALIFORNIA, )  
 )  
Plaintiff, )  
 )  
vs. )  
CLEO FRANK RUTHERFORD, JR., )  
 )  
Defendant. )

No. 32F130

(VIOLATION OF SECTIONS 187  
WITH 7 SPECIAL ALLEGATIONS  
AND 207 WITH 4 SPECIAL  
ALLEGATIONS, PENAL CODE,  
CALIFORNIA)

PRELIMINARY HEARING

BEFORE: HON. WILBUR R. JOHNSON, JUDGE

Department C

Wednesday, January 6, 1982

A P P E A R A N C E S:

For the People:

CARL HOLM,  
Deputy District Attorney

For the Defendant:

CHARLES CONSTANTINIDES, Esq.  
CHARLES ROBINSON, Esq. and  
DAVID MENDEZ, Esq.

1 Exhibit 1, could you tell us if you know who that person is.

2 A It's Patti Geddling.

3 Q And People's Exhibit 2, do you know who that is?

4 A Stacey Benjamin.

5 THE COURT: I'm sorry. What was the answer,

6 Marilyn?

7 (The answer was read.)

8 MR. HOLM: Q How did you know Patti Geddling as

9 of April '81?

10 A Five or six months.

11 Q And Stacey Benjamin?

12 A About eight months.

13 Q Did you know a person by the name of William

14 Forrester?

15 A Yes.

16 Q How long did you know him?

17 A Two years.

18 Q Did you go to high school with him?

19 A Yes.

20 Q Did you go to high school with any of the other  
21 people I asked you about?

22 A No.

23 Q At some point during that two-year period, were  
24 you boyfriend and girlfriend, in a relationship such as that?

25 A Yes.

26 Q Do you recall the period of time that you would

1 be, say, going steady with him?

2 A October --

3 Q Of '80?

4 A Yes.

5 Q And when did you break up, if you did?

6 A January of '81.

7 Q How did you come to meet Patti Geddling; do you  
8 recall?

9 A Yes. Through Bill.

10 Q How about Stacey Benjamin?

11 A Through Bill.

12 Q How about the defendant, Mr. Rutherford?

13 A Through a guy named Steve Lindstrom.

14 Q What about Mr. Geddling, Edgar Geddling?

15 A Through Bill.

16 Q Now, I would like to focus your attention to a  
17 couple weeks before April 24, 1981. Were you in a car with  
18 the defendant as well as Mr. Geddling some place in San  
19 Mateo?

20 A Yes.

21 Q Did you notice either person write on the  
22 windshield the name "Bill"?

23 MR. CONSTANTINIDES: I will object as leading.

24 THE COURT: Sustained.

25 MR. HOLM: Q Did you notice if either one of  
26 those people wrote anything?

1 THE COURT: Pardon?

2 MR. CONSTANTINIDES: May the answer be stricken?

3 THE COURT: Yes. In fact, I will see Mr. Holm  
4 and Mr. Constantinides in chambers.

5 (A discussion was had in chambers, not within  
6 hearing of the reporter.)

7 (The testimony was read.)

8 MR. CONSTANTINIDES: And as I understand it, Your  
9 Honor, that last answer was stricken.

10 THE COURT: The question and answer stricken.  
11 Reask it.

12 MR. HOLM: Q What were the names of the people  
13 that they discussed ways of killing?

14 MR. CONSTANTINIDES: I will object as ambiguous,  
15 the use of the term "they," unless substantiated by the  
16 witness. It also assumes facts not in evidence.

17 THE COURT: Sustained.

18 MR. HOLM: Q When this conversation about killing  
19 people took place, where was it? Where did the conversation  
20 take place?

21 A Inside of Frank's car.

22 Q Who was present inside that car?

23 A Me, Frank, and Ed.

24 Q And approximately when was it?

25 A I can't remember. A couple weeks before the  
26 weekend of the 27th.



1 Q Of which month?

2 A April.

3 Q Did the defendant say anything about killing  
4 people besides Bill?

5 A Yes.

6 Q Whom did he refer to?

7 THE COURT: Excuse me. I will reask the question.  
8 If the defendant said anything, what did he say?

9 Just tell us what, the best you can remember, the words  
10 spoken were and by whom.

11 THE WITNESS: Frank said -- Well, he was  
12 discussing with Ed ways of killing Stacey Benjamin and Patti  
13 Gedding.

14 MR. CONSTANTINIDES: I object; move to strike.  
15 It's nonresponsive.

16 THE COURT: It's responsive enough. Overruled.

17 MR. HOLM: Q Did the defendant say how he would  
18 accomplish this?

19 THE COURT: I will sustain my own objection to  
20 that.

21 Court Ms. Soria, to the best of your ability tell us  
22 what the defendant said and what Ed said. And, if anything,  
23 what you said. Give us to the best of your recollection the  
24 exact statements of the persons, telling us who said what.  
25 Can you do that?

26 THE WITNESS: I'm thinking.

1 THE COURT: Pardon?

2 THE WITNESS: I'm trying to remember.

3 THE COURT: That's all right. We understand it's  
4 some time ago. But the best you can, tell us who said what.

5 THE WITNESS: Okay. Ed said that he wanted -- he  
6 wanted Patti beaten and Stacey's head blown off, he wanted  
7 me to set them up.

8 THE COURT: Wait a minute. Read that to me.

9 (The answer was read.)

10 THE COURT: Go ahead.

11 MR. HOLM: Q Did the defendant Rutherford say  
12 anything about that?

13 A Yeah.

14 Q What did he say?

15 THE COURT: Off the record.

16 (A discussion was had off the record.)

17 THE COURT: Do you remember the question, please,  
18 ma'am?

19 THE WITNESS: No, I don't.

20 THE COURT: Read it.

21 (The testimony was read.)

22 MR. HOLM: Your Honor, there was a question  
23 thereafter.

24 (The testimony was read.)

25 THE COURT: That is the point at which the record  
26 will reflect she waited a few minutes and just as she started

1 to answer Mr. Holm elected to turn and start talking to his  
2 investigating officer.

3 Now, don't do it any more, Mr. Holm.

4 Answer the question, please, Ms. Soria.

5 THE WITNESS: A All I can remember is, Frank --  
6 Frank saying something about he would -- he would take care  
7 of Patti because Ed couldn't do it because Ed would be the  
8 first person they came to if anything happened to her.

9 MR. HOLM: Q Anything else, that you can recall?

10 A I can't remember.

11 Q What was the relationship at that time, in mid-  
12 April, between Patti Geddlings and Edgar Geddlings?

13 A They were separated.

14 Q But otherwise married?

15 A Yeah, they were married.

16 Q Did you on that date, a couple weeks before  
17 April 27th weekend, say anything about what you would do to  
18 assist?

19 A I would set them up.

20 Q Did you say how you would do that?

21 A To have them meet me at a parking lot or  
22 restaurant or something, and instead of me show up Ed and  
23 Frank would show up.

24 THE COURT: Was this a conversation?

25 MR. HOLM: I beg your pardon?

26 THE COURT: Is this part of a conversation?

1 Beardslee at that point.

2 A Yes.

3 Q Was he present during these phone calls?

4 A No.

5 Q Did anyone come over to your apartment after you  
6 made those phone calls?

7 A Yes. Don had came home.

8 Q About what time did Mr. Beardslee come home?

9 A Around 3:30.

10 Q And did you have a conversation with Mr. Beardslee  
11 about the fact that the two girls were coming over to your  
12 apartment?

13 A Yes.

14 Q What did you tell him?

15 A I told him that Bill had got ripped off and that  
16 Stacey and Patti were coming over, Bill was on his way over,  
17 that Frank had wanted Don to call him so Frank could have a  
18 ride over to the apartment.

19 Q Did Mr. Rutherford tell you that in that phone  
20 call?

21 Excuse me.

22 A No.

23 MR. HOLM: Let me withdraw the question.

24 MR. CONSTANTINIDES: What? I would like the  
25 question and answer to remain.

26 THE COURT: Pardon?

1 A Frank.

2 Q Did you overhear Mr. Beardslee's conversation  
3 with the other person on the line?

4 A No.

5 MR. CONSTANTINIDES: Then, I will move to strike  
6 the previous answer as being without foundation. It's  
7 obviously -- Well, who knows how she knows. But it's without  
8 foundation.

9 THE COURT: Subject to cross-examination.  
10 Overruled.

11 MR. HOLM: Q Did Mr. Beardslee leave then or  
12 sometime later?

13 A Yes.

14 Q Approximately how long after he made that phone  
15 call?

16 A About ten minutes.

17 Q Do you remember approximately what time this was?

18 A Almost 4:00 o'clock.

19 Q Was anyone else present in your apartment at that  
20 point besides you and Mr. Beardslee?

21 A Right before Don had left, Bill had arrived.

22 Q Is this Mr. Forrester?

23 A Yes.

24 Q Did anyone arrive with him?

25 A Yes.

26 Q Who?

1 A Before.

2 Q Did you leave the apartment again after you had  
3 returned from the market?

4 A Yes.

5 Q Where did you go?

6 A To the Hollywood Motel.

7 Q Was there any weapon in the apartment that  
8 afternoon?

9 A Yes.

10 Q What type?

11 A A shotgun.

12 Q What kind?

13 A A double-barrel sawed-off shotgun.

14 Q Do you know how it got into your apartment?

15 A Yes.

16 Q How.

17 A It was brought over in Don's car from Frank's  
18 house.

19 Q And --

20 MR. CONSTANTINIDES: Objection; hearsay.

21 THE COURT: Overruled.

22 MR. HOLM: Q When it was in the apartment, did  
23 you see anybody handling the shotgun?

24 A Yes.

25 Q Who?

26 A Frank.

1 Q What was he doing with the knife?

2 A Holding it. It was out.

3 Q And was he displaying it, using it in any way?

4 A Just displaying it, I guess.

5 Q You mentioned that they were herded, the girls  
6 were herded, over to where?

7 A To the couch.

8 Q Can you see your couch from the entrance to your  
9 apartment?

10 A Yes.

11 Q Were they herded over pretty close to the couch?

12 A Yes.

13 Q What happened then?

14 A Patti was standing in front of Frank. And Bill  
15 was -- I mean, Stacey was in front of Bill. And it was like  
16 they were all facing each other. And I was walking toward  
17 the kitchen. And as I was walking, I heard a shot. And I  
18 turned to look, and they were sitting on the couch and  
19 Stacey -- I mean, Patti was saying she had been shot.

20 Q Could you tell where she had been shot?

21 A Yes. In the shoulder, right here.

22 Q Which shoulder?

23 A The left.

24 Q And after you heard the shot and turned around,  
25 did you see anyone holding the shotgun?

26 A Yes.

1 Q Who was holding it?

2 A Frank.

3 Q Did you hear any other statement by Patti at that  
4 point besides, "I've been shot"?

5 A No.

6 Q Did Mr. Rutherford say anything at this point?

7 A Yes.

8 Q What did he say?

9 A He said, "She shouldn't have grabbed for the gun."

10 Q What about Mr. Forrester?

11 A He was just saying, "Shut up," and, "Be quiet,"  
12 and all this stuff. He had the knife to Stacey's throat.

13 Q What happened then?

14 A Then Don took Patti into the bathroom to try to  
15 stop the bleeding.

16 Q Did you notice any blood in the apartment?

17 A Yes.

18 Q Where was it located?

19 A There was a big spot on the couch, a few little  
20 drops on the rug and on the cushion of the couch.

21 Q As you looked at the couch, which cushion would it  
22 be?

23 A The left.

24 Q How many cushions would there be on the seat?

25 A Two.

26 Q Did you do anything with the cushion and to the



1 A Yes.

2 Q What did he say?

3 A That -- He asked me what I thought about killing  
4 Patti.

5 Q Did he say why he was interested in that?

6 MR. CONSTANTINIDES: I will object. That assumes  
7 facts not in evidence.

8 THE COURT: Overruled.

9 MR. HOLM: You may answer.

10 THE WITNESS: A Why did he say that?

11 MR. HOLM: Q Did he say why he said that?

12 A Yes. When him and Frank had left to pick up  
13 Frank's car, they had discussed this.

14 Q Who is "they"?

15 A Frank and --

16 MR. CONSTANTINIDES: I will object; move to strike  
17 as hearsay.

18 THE COURT: Overruled.

19 THE WITNESS: A Frank and Eddie.

20 MR. HOLM: Q In your presence?

21 A No. While they were gone.

22 Q Who reported this to you?

23 A Ed.

24 Q Did he say what the conversation was about, about  
25 killing Patti?

26 A Yes; about why Patti should be killed.

1 Q And where did he say this?

2 A In the apartment?

3 Q Yes. Where in the apartment?

4 A He was standing in the closet when he told me  
5 this. I was sitting in the bathroom with Patti and Stacey.  
6 And he came into the closet and said that we were going to  
7 take Patti to the hospital.

8 Q Did he do anything while he was saying this to  
9 you?

10 A Yes.

11 Q What did he do?

12 A He winked his eye.

13 THE COURT: What?

14 THE WITNESS: He winked his eye.

15 MR. HOLM: Q How was it that Stacey got into the  
16 bathroom from the living room area?

17 A She just walked in there.

18 Q Did anyone direct her into there?

19 A Yeah. I think either Frank or Don did, told her  
20 to go into the bathroom and sit with Patti.

21 Q This statement that Mr. Rutherford made about  
22 taking Patti to the hospital and then the wink, when was this  
23 made in relationship to dropping Eddie off at his parents'  
24 house?

25 A This was after.

26 Q Was anyone else there besides you, Stacey, and

1 Q Can you recall what type of pleading this was?  
2 What was being said?

3 A Yeah. Patti was saying -- She was saying,  
4 "Please don't kill me. Why are you doing this?"

5 Q Did she say anything else?

6 A No.

7 Q Did you hear any response when she was saying  
8 that?

9 A Yeah. Bill said, "Shut up."

10 Q Was this -- Go ahead. I'm sorry. Was this before  
11 or after you heard the shotgun go off?

12 A Before.

13 Q After you heard the shotgun, or the two shots,  
14 what happened then?

15 A After I heard them?

16 Q Yes.

17 A Don came back up to the window and asked for two  
18 more shells.

19 Q Did he say why he wanted two more?

20 A Yeah. He said he was going to shoot her again.

21 Q Did he say why he wanted to do that?

22 A To make sure she was dead.

23 Q Did he say anything else?

24 A No. Then he took the shotgun shells. And the van  
25 was being turned around. And then the van was facing the  
26 same way the car was, and he was standing at the window of

1 the van.

2 Q Who is "he"?

3 A Don. And he was saying something about the  
4 shotgun wouldn't work.

5 Q Did you hear him say anything else?

6 A That -- He came back up to the window of the car,  
7 and he asked me if I knew anything about it. I said no.  
8 And then he went back to the van. And then he said that he  
9 figured out what was wrong with it, that the -- the safety  
10 was on.

11 Q What happened then, after he came back up to your  
12 car and said he figured it out?

13 A Then he went back to the van, stood in between the  
14 van and the car, and two more shots went off.

15 Q Did you happen to see Patti during this time?

16 A No.

17 Q What happened after you heard those last two  
18 shots?

19 A Don came -- opened the door of the car and -- and  
20 I moved over. And then Bill came up to the car and said that  
21 he didn't want to drive.

22 Q When you say Bill came up to the car, you mean he  
23 walked up?

24 A Yes.

25 Q And did he say what he didn't want to drive?

26 A The van.

IN THE MUNICIPAL COURT, SOUTHERN JUDICIAL DISTRICT  
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

(ENDORSED)

**FILED**

MAR 1 1982

MARVIN CHURCH County Clerk  
By ANN HARRIS  
DEPUTY CLERK

THE PEOPLE OF THE  
STATE OF CALIFORNIA,

Plaintiff,

vs.

CLEO FRANK RUTHERFORD, JR.,

Defendant.

No. 32F130

(VIOLATION OF SECTIONS 187  
WITH 7 SPECIAL ALLEGATIONS  
AND 207 WITH 4 SPECIAL  
ALLEGATIONS, PENAL CODE,  
CALIFORNIA)

PRELIMINARY HEARING

Before: HON. WILBUR R. JOHNSON, JUDGE

Department C

Thursday, January 7, 1982

A P P E A R A N C E S:

For the People:

CARL HOLM,  
Deputy District Attorney

For the Defendant:

CHARLES CONSTANTINIDES, Esq.  
CHARLES ROBINSON, Esq. and  
DAVID MENDEZ, Esq.

1 anything unusual happen inside the car?

2 A Yeah. Don asked me for Stacey's purse.

3 Q What happened then?

4 A He went through it and was throwing things out  
5 of the car that were in her purse.

6 Q Did you notice what those things were; could you  
7 tell?

8 A Just papers and stuff.

9 Q Did Frank say anything while this was going on?

10 A Yes. He said he wanted -- he wanted to know if  
11 there was a little pink spoon inside of it.

12 Q Did he say why?

13 A Because he wanted it.

14 Q He didn't give you a reason or make a statement  
15 about it?

16 A No.

17 Q Did it appear that Don found the little pink  
18 spoon?

19 A Yes.

20 Q What was Frank's reaction, if anything?

21 A He just took it.

22 Q Did you happen to see the wire or those shotgun  
23 shells later, once you came back to the car and went to  
24 Redwood City?

25 A No.

26 Q While you went back to Redwood City did you fall

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(ENDORSED)

FILED  
MAR 1 1982

By MARVIN CHURCH County Clerk  
ANN HARRIS  
DEPUTY CLERK

IN THE MUNICIPAL COURT, SOUTHERN JUDICIAL DISTRICT,  
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

THE PEOPLE OF THE )  
STATE OF CALIFORNIA, )  
 )  
Plaintiff, )  
 )  
vs. )  
CLEO FRANK RUTHERFORD, JR., )  
 )  
Defendant. )

No. 32F130

(VIOLATION OF SECTIONS 187  
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ALLEGATIONS, PENAL CODE,  
CALIFORNIA)

PRELIMINARY HEARING

Before: HON. WILBUR R. JOHNSON, JUDGE

Department C

Monday, January 11, 1982

A P P E A R A N C E S:

For the People:

CHARLES SMITH,  
Deputy District Attorney

For the Defendant:

CHARLES CONSTANTINIDES, Esq..  
CHARLES ROBINSON, Esq., and  
DAVID MENDEZ, Esq.

1 Q Had Geddlings essentially evicted you before that?

2 A No.

3 Q Why is it that you needed a place to stay?

4 A I didn't want to go back there.

5 Q What, to Geddlings's?

6 A Yes.

7 Q Why was that?

8 A I wanted to stop using drugs, stop injecting  
9 drugs. That's the reason I was sick.

10 Q You had gotten hepatitis or something?

11 A No.

12 Q Before you moved in with Don Beardslee, how often  
13 had you talked with him?

14 A With Don?

15 Q Yes.

16 A Not too often.

17 Q You met him that time hitchhiking; that first time  
18 you met him, where did the two of you go?

19 A We went to Hillsdale Shopping Center.

20 Q Did you shop?

21 A Yes. I bought some shoes.

22 Q Did Mr. Beardslee buy them for you?

23 A No.

24 Q Did Beardslee go with you to the shopping center?

25 A Yes.

26 Q Did he go shopping with you?



1 Q When you moved in with Mr. Beardslee the two of  
2 you shared a bed; correct?

3 A Yes.

4 Q And would the two of you, during that two months  
5 or so that you were living with him, have sexual intercourse  
6 with some frequency?

7 A No.

8 Q Just occasionally?

9 A Twice the whole time I was there.

10 Q Was Mr. Beardslee following another romantic  
11 relationship, to your knowledge?

12 A He -- He was interested in this other person, yes.

13 Q What other person is that?

14 A A girl from San Bruno.

15 Q Do you know her name?

16 A No.

17 Q Have you ever found her name in any of those  
18 police reports that you looked through?

19 A No.

20 Q Did Mr. Beardslee have, to your knowledge, any  
21 homosexual relationships?

22 A While I was living there?

23 Q Yes.

24 A No.

25 Q While you weren't?

26 A While he was in prison.

1 A No.

2 Q Or Patti or Stacey?

3 A No.

4 Q Did you feel that you owed Bill Forrester a favor  
5 in April of 1981?

6 A No.

7 Q Why would you agree to set up Stacey and Patti  
8 for Bill Forrester?

9 A So he could give me part of his money.

10 Q Did he owe you money?

11 A I felt that he did, yes.

12 Q Why did you feel that way, Rickie?

13 A Well, for the most part, I felt that he owed my  
14 aunt the money.

15 Q Why is that?

16 A Well, he had stolen two sets of wedding rings  
17 from her.

18 Q From your aunt?

19 A Yes.

20 Q What is your aunt's name?

21 A Rojean.

22 Q What is her last name?

23 A Hedgecock.

24 Q When had Bill done that?

25 A About November of '80.

26 Q And I take it Bill had then sold the rings to buy

1 A Yes.

2 Q So the next time that you then hear anybody say  
3 anything heavy about Stacey is when Bill called you on  
4 Thursday night. That would be the 23rd.

5 A Yes.

6 Q Where were you when he called you up?

7 A I was at the apartment.

8 Q Now, before Bill called you up had you talked  
9 with Don Beardslee about everybody wanting to set Stacey up  
10 or somehow hurt Stacey?

11 A No.

12 Q Would it be fair to say that you considered that  
13 Don had no part of this business?

14 A Yes.

15 THE COURT: Off the record.

16 (A discussion was had off the record.)

17 MR. CONSTANTINIDES: Q During the time you knew  
18 Frank, did he complain of headaches?

19 A Yes.

20 Q Frequently?

21 A Yes.

22 Q Did he say that they were bad headaches?

23 A Yes. They were pretty bad headaches, yes.

24 Q Can you describe how he acted when he had these  
25 headaches?

26 A He acted like anybody else with a headache.

IN THE MUNICIPAL COURT, SOUTHERN JUDICIAL DISTRICT  
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

(ENDORSED)

**FILED**  
MAR 1 1982

MARVIN CHURCH County Clerk  
By **ANN HARRIS**  
DEPUTY CLERK

THE PEOPLE OF THE  
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CLEO FRANK RUTHERFORD, JR.,

Defendant.

No. 32F130

(VIOLATION OF SECTIONS 187  
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CALIFORNIA)

PRELIMINARY HEARING

Before: HON. WILBUR R. JOHNSON, JUDGE

Department C

Monday, January 11, 1982

A P P E A R A N C E S:

For the People:

CHARLES SMITH,  
Deputy District Attorney

For the Defendant:

CHARLES CONSTANTINIDES, Esq.  
CHARLES ROBINSON, Esq. and  
DAVID MENDEZ, Esq.

1 Q What did you do?

2 A I turned up the stereo. And the landlord knocked  
3 on the door, so --

4 Q So --

5 A So I answered the door. And he told me to turn  
6 down the stereo. And he asked me what that noise was, and I  
7 told him that I let a firecracker go off in the apartment.

8 Q So you are the one who came up with the  
9 firecracker story?

10 A Yep.

11 Q Did the landlord appear just after Don and Patti  
12 disappeared into the bathroom?

13 A Yes.

14 Q And at that point Frank was still in the living  
15 room?

16 A Yes.

17 Q And so was Bill?

18 A Yes.

19 Q And so was Stacey?

20 A Yes.

21 Q Was it before the landlord came to the door that  
22 Bill took the two women's purses?

23 A I don't know.

24 Q Before the landlord came to the door, did Frank  
25 say anything else other than what you have just told us?

26 A Yeah.

1 Q What?

2 A Told us to clean up the blood.

3 Q Did Bill say anything?

4 A Yeah. He asked where a washcloth was.

5 Q He wanted a washcloth to clean up the floor?

6 A Yeah. There was blood on the couch.

7 Q Did you say anything?

8 A Yeah. I gave him a washcloth and told him to  
9 clean up the blood.

10 Q After the landlord came and you gave him the  
11 firecracker story, where did you go?

12 A Into the kitchen.

13 Q What did you do?

14 A I got a sponge and some water.

15 Q And you went out to the living room?

16 A Yes.

17 Q When you got to the living room where was Frank?

18 A He was in the living room.

19 Q What was he doing?

20 A I don't know. I can't remember.

21 Q Did you see the gun?

22 A Yes. I think he was still holding it.

23 Q And how about Bill; what was he doing?

24 A Bill was standing right next to Stacey with the  
25 knife at her throat.

26 Q Was Bill saying anything?

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(ENDORSED)

FILED

MAR 1 1982

IN THE MUNICIPAL COURT, SOUTHERN JUDICIAL DISTRICT  
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

MARVIN CHURCH, County Clerk  
By ANN HARRIS

DEPUTY CLERK

No. 32F130

THE PEOPLE OF THE  
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ALLEGATIONS, PENAL CODE,  
CALIFORNIA)

PRELIMINARY HEARING

Before: HON. WILBUR R. JOHNSON, JUDGE

Department C

Tuesday, January 12, 1982

A P P E A R A N C E S:

For the People:

CARL HOLM,  
Deputy District Attorney

For the Defendant:

CHARLES CONSTANTINIDES, Esq.,  
CHARLES ROBINSON, Esq., and  
DAVID MENDEZ, Esq.

1 what time that was?

2 A. Probably about 5:30.

3 Q. Had you looked at a clock when he had gone to the  
4 landlord's?

5 A. No.

6 Q. So you were just estimating?

7 A. Yeah. I'm not sure what time it was.

8 Q. When he went to the landlord's, Michele and  
9 George were still downstairs?

10 A. Yes.

11 Q. And Don was gone for how long?

12 A. A few minutes.

13 Q. More than five?

14 A. No.

15 Q. That was Don's idea, to go talk to the landlord?

16 A. Yes.

17 Q. And Don was concerned the landlord had overheard  
18 the shot?

19 A. Yes.

20 Q. Was he also concerned that they wouldn't believe  
21 your firecracker story?

22 A. He told them the same story.

23 Q. Did you tell Don before you went to the landlord's  
24 that you had already told the landlord that it was a  
25 firecracker?

26 A. Yes.



IN THE MUNICIPAL COURT, SOUTHERN JUDICIAL DISTRICT  
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

(ENDORSED)  
**FILED**

MAR 1 1982

MARVIN CHURCH, County Clerk  
By ANN HARRIS  
DEPUTY CLERK

THE PEOPLE OF THE  
STATE OF CALIFORNIA,

Plaintiff,

vs.

CLEO FRANK RUTHERFORD, JR.,

Defendant.

No. 32F130

(VIOLATION OF SECTIONS 187  
WITH 7 SPECIAL ALLEGATIONS  
AND 207 WITH 4 SPECIAL  
ALLEGATIONS, PENAL CODE,  
CALIFORNIA)

PRELIMINARY HEARING

Before: HON. WILBUR R. JOHNSON, JUDGE

Department C

Tuesday, January 12, 1982

A P P E A R A N C E S:

For the People:

CARL HOLM,  
Deputy District Attorney

For the Defendant:

CHARLES CONSTANTINIDES, Esq.,  
CHARLES ROBINSON, Esq., and  
DAVID MENDEZ, Esq.

1 A Yes. And if Stacey was killed, she would be a  
2 witness to that.

3 Q Did he say that, "They are going to kill Stacey"?

4 A No.

5 Q Did he say, "They are going to kill Patti," or,  
6 "They better kill Patti because she is a witness"?

7 A He said, "Patti is going to be killed because she --  
8 she would be a witness."

9 Q Now, you are sure that he said, "Patti is going  
10 to be killed"?

11 A Yes.

12 Q It wasn't something like, "Patti should be  
13 killed," or, "Maybe they should kill Patti"?

14 A No.

15 Q Are you sure?

16 A Yes.

17 Q How many times did Ed say this?

18 A -- Once or twice.

19 Q You don't know whether it was once or twice?

20 A No, I'm not sure.

21 Q Was this a long conversation that you and he had?

22 A No, not too long.

23 Q Did you ask him why he was telling you this?

24 A No.

25 Q Did you ask him whether he was going to help kill  
26 Patti?

- 1 A That's the reason he left.
- 2 Q Did he tell you that?
- 3 A Yeah, so he would have an alibi.
- 4 Q What exactly did he say about an alibi?
- 5 A The reason he is going to Vicki's house is so he
- 6 will have an alibi.
- 7 Q Had you asked him why he wanted to go to Vicki's
- 8 house?
- 9 A Yes.
- 10 Q And that's when he told you, "Because I need an
- 11 alibi"?
- 12 A Yes.
- 13 Q You then said, "Why do you need an alibi?"
- 14 A No. I already knew why.
- 15 Q So you asked him why he wanted to go to Vicki's
- 16 house after he said, "They're going to kill Patti"?
- 17 A Right.
- 18 Q So there was no mention of Stacey; just Patti?
- 19 A Right.
- 20 Q Did he say how they were going to kill Patti?
- 21 A No.
- 22 Q Did you ask him how?
- 23 A No.
- 24 Q Were you afraid of Ed at that point?
- 25 A No.
- 26 Q Why not?

(ENDORSED)

IN THE MUNICIPAL COURT, SOUTHERN JUDICIAL DISTRICT

COUNTY OF SAN MATEO, STATE OF CALIFORNIA

MAR 1 1982  
 MARVIN CHURCH, County Clerk  
 By ANN HARRIS  
 DEPUTY CLERK

THE PEOPLE OF THE  
 STATE OF CALIFORNIA,

Plaintiff,

vs.

CLEO FRANK RUTHERFORD, JR.,

Defendant.

No. 32F136

(VIOLATION OF SECTIONS 187  
 WITH 7 SPECIAL ALLEGATIONS  
 AND 207 WITH 4 SPECIAL  
 ALLEGATIONS, PENAL CODE,  
 CALIFORNIA)

## PRELIMINARY HEARING

Before: HON. WILBUR R. JOHNSON, JUDGE

Department C

Monday, January 18, 1982

A P P E A R A N C E S:

For the People:

CARL HOLM,  
 Deputy District Attorney

For the Defendant:

CHARLES CONSTANTINIDES, Esq.  
 CHARLES ROBINSON, Esq. and  
 DAVID MENDEZ, Esq.

1 Q Did Mr. Forrester do anything?

2 A He wiped the dashboard and the seat and the door  
3 handle.

4 Q What about Mr. Beardslee; did he do any cleaning?

5 A No.

6 Q I believe you also testified on cross that Mr.  
7 Beardslee was acting crazy on April 24th and 25th; is that  
8 right?

9 A Yes.

10 Q Could you expound or explain what you meant by  
11 that.

12 A He was real quiet, and he was so anxious to do  
13 things.

14 Q Wanted to get things over with?

15 A Yes.

16 Q Is that unusual in your relationship with Mr.  
17 Beardslee?

18 A Yes.

19 Q How is it unusual?

20 A Normally he's just real easygoing, you know, real  
21 mellow.

22 Q Is he talkative, normally?

23 A Yes.

24 Q So the difference, is it fair to say: one, he was  
25 less talkative and more anxious at this point --

26 A Yes.

1 know anything about; right?

2 A Right.

3 Q And, in fact, you thought it was kind of strange  
4 that he would get involved in killing two women when he had  
5 no motive at all; right?

6 A Right.

7 Q And part of that strangeness of Beardslee created  
8 some fear in you of him?

9 A Yes.

10 Q Did he seem to have a crazy look in his eyes?

11 A He had a different look.

12 Q When you were at the top of the Hopland Grade  
13 and you saw Stacey crying, did you know why she was crying?

14 A Not exactly, no.

15 Q I realize that you made some assumption about why  
16 she was crying. Correct?

17 A Yes.

18 Q But you don't know what was said to her, if  
19 anything, while you were asleep which might have created her  
20 crying.

21 A Right.

22 Q Did Stacey seem quite concerned about Patti during  
23 the trip from the apartment which eventually wound up at  
24 Hopland Grade?

25 A Yes.

26 Q Indeed, you thought that she loved Patti; correct?

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 70: Excerpts from the Guilt Phase in *People v. Cleo Frank  
Rutherford*, reporters' transcript pages 988, 1257**

DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF )  
CALIFORNIA, )  
 )  
Plaintiff & )  
Respondent, )  
 )  
vs. )  
 )  
CLEO FRANK RUTHERFORD, )  
 )  
Defendant & )  
Appellant. )  
 )

REPORTERS' TRANSCRIPT ON APPEAL

Appeal from the Judgement of the Superior  
Court, State of California, County of  
San Mateo, made and entered on September  
17, 1982.

Before: HON. FRANK PIOMBO, JUDGE

A P P E A R A N C E S:

For the Plaintiff &  
Respondent:

GEORGE DEUKMEJIAN, ATTORNEY GENERAL  
State Building  
San Francisco, California

For the Defendant &  
Appellant

IN PROPRIA PERSONA

VOLUME VI

Page 950 thru 1144 inclusive



1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN MATEO

ENDORSED  
**FILED**

JUL 15 1982

MARVIN CHURCH, County Clerk  
By **TANIA GRUBEL**  
DEPUTY CLERK

4 THE PEOPLE OF THE STATE OF CALIFORNIA, )  
5 Plaintiff, )

6 vs. )

7 CLEO FRANK RUTHERFORD, JR., )

8 Defendant. )  
9 )  
10 )

No. C-10990

11 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS

12 Before: HONORABLE FRANK PIOMBO

13 Department No. 10

14 WEDNESDAY, JULY 14, 1982

15 THURSDAY, July 15, 1982

16 A P P E A R A N C E S:

17 For the People:

KEITH C. SORENSON, District Attorney  
By: CARL W. HOLM, DDA  
3rd Floor, Hall of Justice  
Redwood City, California 94063

20 For the Defendant:

NOLAN, CONSTANTINIDES & PARNES  
By: CHARLES CONSTANTINIDES, Esq.  
and  
CHARLES M. ROBINSON, Esq.  
600 University Avenue  
Palo Alto, California 94301

24 Reported by:

25 PAMELA FISK, C.S.R. NO. 1807  
and  
26 MARILYN Y. PLACE, C.S.R. NO. 4053

1 Q So, you were the closest to the door?

2 A Yes.

3 Q Who was next to you?

4 A Don.

5 Q And then the defendant?

6 A Yes.

7 Q Did Beardslee say anything in response to the  
8 defendant's saying, "Do a good job, Don"?

9 A He just said, "I will."

10 Q All right. Did you -- do you recall the  
11 defendant saying anything about the van itself, what  
12 should happen to the van?

13 A No, I don't remember.

14 Q Did you give a statement to Detective Morse and  
15 Detective Buchalter back on November 13, 1981, after you  
16 entered a plea to this case?

17 A Yes.

18 Q And if you had an opportunity to review portions  
19 of that statement, you think it might refresh your  
20 recollection on the question I asked about if the defendant  
21 said anything with respect to the van?

22 A Yes.

23 MR. CONSTANTINIDES: Does she have no present  
24 recollection at all? That's the foundation.

25 MR. HOLM: No. There is no requirement for no  
26 present recollection.

DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF )  
CALIFORNIA, )

Plaintiff & )  
Respondent, )

vs. )

CLEO FRANK RUTHERFORD, )

Defendant & )  
Appellant. )

REPORTERS' TRANSCRIPT ON APPEAL

Appeal from the Judgement of the Superior  
Court, State of California, County of  
San Mateo, made and entered on September  
17, 1982.

Before: HON. FRANK PIOMBO, JUDGE

A P P E A R A N C E S:

For the Plaintiff &  
Respondent:

GEORGE DEUKMEJIAN, ATTORNEY GENERAL  
State Building  
San Francisco, California

For the Defendant &  
Appellant

IN PROPRIA PERSONA

VOLUME VII

Page 1145 thru 1343 inclusive



- 1 Q Whose idea was it to wipe down the van?
- 2 A Mine and Bill's.
- 3 Q Are you sure that it wasn't just your idea alone?
- 4 A Not completely sure now.
- 5 Q So it might have been your idea alone?
- 6 A Right.
- 7 Q And who took Patty's purse out of the van?
- 8 A I don't remember.
- 9 Q Do you remember, on the drive down to Redwood
- 10 City, where it was in the car?
- 11 THE COURT: Was this afterwards? We're going
- 12 back --
- 13 MR. CONSTANTINIDES: This is going back to
- 14 Redwood City.
- 15 THE COURT: Going back --
- 16 MR. CONSTANTINIDES: Oh, yes.
- 17 THE COURT: Oh.
- 18 THE WITNESS: Might have been in the back seat.
- 19 MR. CONSTANTINIDES: Q You don't remember where
- 20 it was?
- 21 A Not exactly, no.
- 22 Q Do you remember seeing it at all in the car?
- 23 A No.
- 24 Q The keys to the van, where did they end up?
- 25 A I don't remember.
- 26 Q Did you tell Forrester to toss them out the

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 71: Materials from the San Mateo County Sheriff's Department  
Obtained January 4, 2004**



<sup>Beardslee's</sup>  
I spoke with Mr. Doug Gray; ~~Beardslee's~~  
attorney. Mr. Gray expressed concern about  
Beardslee's housing in the jail. I was  
informed that Beardslee had been moved  
into the medical tank with other  
inmates. The jail staff moved Mr. Beardslee  
because he appeared very ~~at~~ depressed  
and would not eat. ~~They~~ ~~that~~ I was  
felt that he would be better off around  
other people and the medical tank  
presented little if any ~~practical~~ security  
problem.

I spoke with ~~that~~ Mr. Beardslee  
and he told me that he felt much  
better and that he was very concerned  
about being with other inmates. I  
asked him if he would feel better off  
by himself and he replied yes, he would.  
I then arranged with the supervisor,  
Sgt. Vinay to move Mr. Beardslee back  
into a single cell.



**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 72: Materials Relating to the Clemency of William A. Young  
(October 3, 1941)**

## Executive Department

State of California

C. EVANS & SONS, PRINTERS

There has been submitted to this office an application for a commutation of sentence from death to life imprisonment on behalf of WILLIAM A. YOUNG, San Quentin No. 68410, who was convicted of the crime of murder in the first degree in Los Angeles County, on August 19, 1940.

Under date of April 28, 1941 the Advisory Pardon Board received the following recommendation from Honorable Pierson H. Hall, Judge of the Superior Court, Los Angeles County:

"Reference is made to your letter of April 24th, 1941, advising that the application for commutation of sentence from death to life imprisonment filed by William A. Young has been referred to you, and that inasmuch as I was the Trial Judge you desire my recommendation.

"The trial was fairly conducted. I do not believe that any of the witnesses for the state perjured themselves or gave false testimony. From hearing the evidence, the killing was in my judgment deliberate murder; not however for gain, nor yet for revenge, but committed at the dictate of a mind which could not be classified as insane, yet which had a distorted sense of values.

"I recommend commutation. Certainly not on account of the reasons advanced by the applicant but solely because I am not convinced that the taking of this defendant's life by society will do any good."

Subsequently I submitted this application to the Supreme Court for its consideration, and under date of October 7, 1941 I received the following message from Chief Justice Phil S. Gibson:

# Executive Department

-2-

## State of California

"A majority of the Justices of the Supreme Court recommend that executive clemency be granted by you to William A. Young, San Quentin prisoner No. 65410, to the extent of commuting his sentence from death to life imprisonment."

In view of the foregoing favorable recommendations, and after careful study of this application, which indicates the killing may have been committed by this applicant while in the heat of passion and with a minimum of premeditation, I feel it my duty to commute his death sentence to life imprisonment.

HENRY WILLIAMS I, CLEVELAND L. OLSON, Governor of the State of California, pursuant to the authority vested in me by the Constitution and the Statutes of the said State, do hereby commute the sentence of WILLIAM A. YOUNG, San Quentin No. 65410, from death to life imprisonment.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 13th day of October, A. D. nineteen hundred and forty-one.

*Cleveland L. Olson*  
Governor of California

*Gene T. ...*  
Secretary of State

*By Charles G. ...*  
Deputy Secretary of State



CALIFORNIA STATE PRINTING OFFICE  
GEORGE H. MOORE, STATE PRINTER

ELLIS E. PATTERSON  
LIEUTENANT GOVERNOR, CHAIRMAN

EARL WARREN  
ATTORNEY GENERAL

C. H. STONE  
CHIEF, DIVISION OF CRIMINAL IDENTIFICATION  
AND INVESTIGATION

CULBERT L. OLSON  
GOVERNOR OF CALIFORNIA



CLINTON T. DUFFY  
WARDEN, SAN QUENTIN PRISON

CLYDE I. PLUMMER  
WARDEN, FOLSOM PRISON

PAUL YARWOOD  
SECRETARY

STATE OF CALIFORNIA  
DEPARTMENT OF PENOLOGY  
DIVISION OF PARDONS AND COMMUTATIONS

*Advisory Pardon Board*

STATE CAPITOL  
SACRAMENTO, CALIFORNIA

July 2, 1941

Honorable Culbert L. Olson  
Governor, State of California  
Sacramento, California

In Re: A.P.B. Case  
No. 156-1941

Dear Governor Olson:

Under date of April 16, 1941 your office officially referred to the Advisory Pardon Board for investigation, consideration and recommendation to the Governor, the Application for COMMUTATION OF SENTENCE FROM DEATH TO LIFE IMPRISONMENT submitted by WILLIAM A. YOUNG, Condemned San Quentin No. 65410 (2T), who was convicted by a jury in Los Angeles County of the Crime of Murder First Degree on August 19, 1940.

This Application was taken up for consideration at a meeting of the Advisory Pardon Board held in San Francisco on June 30, 1941.

The Board recommends to your Excellency that this Application for Commutation of Sentence from Death to Life Imprisonment be denied. After carefully considering this case, the statements advanced by applicant in his own behalf and typewritten Brief in support of this clemency application as prepared by Attorney Ernest P. Morgan of Los Angeles, this Board fails to find where it would be justified in recommending that the death sentence be commuted to life imprisonment. On the other hand, it heartily concurs in the unfavorable recommendation submitted by the Chief of Police, City of Los Angeles (where crime was committed); Deputy District Attorney who prosecuted applicant and stated he was opposed to the extension of leniency to Young as he was of the opinion that this was a cold-blooded, willful, deliberate and premeditated murder and firmly believes that the original sentence of death should be carried out; and the District

Hon. Culbert L. Olson

- 2 -

7-2-41

Attorney of Los Angeles County who advised he was opposed to the extension of further leniency as regards applicant. It was noted by the Board that the applicant Young is not now insane nor was insane at the time of the offense; such information having been set forth in Psychiatric Reports submitted to the Board by D. G. Schmidt, M. D., Resident Psychiatrist at San Quentin Prison and Dr. Aaron J. Rosanoff, Director of the State Department of Institutions.

The Governor's complete file relating to this case is herewith returned.

Very respectfully yours,

ADVISORY PARDON BOARD

By

  
Paul Yarwood, Secretary

A. P. B. CASE NO. 156-1941

JUNE 20, 1941

State of California  
Department of Penology  
Division of Pardons and Commutations  
ADVISORY PARDON BOARD  
Sacramento, California

- - -

In Re:- Application for COMMUTATION OF SENTENCE FROM DEATH TO  
LIFE IMPRISONMENT  
Submitted By:-  
WILLIAM A. YOUNG, Condemned San Quentin No. 65410

THIS CASE INVOLVES THE DEATH PENALTY.

This applicant, Spanish-American, native of California, shoe maker and laborer, now 27 years of age, was convicted by a jury in Los Angeles County on August 19, 1940 of the Crime of Murder First Degree (without leniency). Therefore, he was received at San Quentin Prison on August 22, 1940 under a death sentence, and up to the present time has been confined therein for about 10 months actual time. The original date of execution was set for June 20, 1941; however, at the written request of this Board, Governor Culbert L. Olson on June 13, 1941 granted a ninety-day reprieve to Young, extending the execution date to SEPTEMBER 19, 1941 so as to enable this Board to make its investigation and give consideration to the commutation application. The case went up on automatic appeal to the State Supreme Court, which by its decision rendered on February 20, 1941 affirmed the judgment of the trial court.

Statement of Crime:- This applicant was convicted of having killed Ruth Lugo (female), 29 years of age, on June 10, 1940 at  
(continued on page "b")

(continued from page "a")

1929 Santee Street, Los Angeles. A gun was used in the commission of this offense.

Recommendations:- Chief of Police, City of Los Angeles (where crime was committed) recommends unfavorably; Sheriff of Los Angeles County makes no recommendation; Deputy District Attorney who prosecuted this case is opposed to the extension of leniency to applicant, as he is of the opinion that this was a cold-blooded, willful, deliberate, and premeditated murder, and firmly believes that the original sentence of death should be carried out; District Attorney is opposed to the extension of further leniency as regards this applicant; Trial Judge recommends commutation of sentence--not on account of the reasons advanced by the applicant, but solely because he is not convinced that the taking of Young's life by society will do any good.

A Certificate of Conduct dated April 25, 1941 addressed to Governor Bulbert L. Olson reveals that applicant's conduct at San Quentin since date of incarceration, which was August 22, 1940, has been good; further, that he has served a term sentence equal to about 11 months.

NOTE:- A copy of the Transcript of Testimony taken at trial is on file with this case and available to the Board members.

NOTE:- This is the same applicant who as William A. Young, Discharged San Quentin No. 57543, was convicted by a jury in Los Angeles County on April 3, 1935 of the Crime of Second Degree Burglary and received at San Quentin Prison on April 13, 1935.

He was discharged directly from prison on September 8, 1938. He made Application for Pardon which was referred to this Board on October 20, 1939 by the Governor's Office as A. P. B. Case No. 425-1939. The Board considered his application at a meeting held on May 28, 1940 and recommended to Governor Culbert L. Olson that the same be denied, which will be noted from the following resume:

"The Board recommends to Your Excellency that this Application for Pardon be denied. Due to applicant's past criminal record and the fact that he was discharged from sentence on September 8, 1938, the Board feels that a sufficient length of time has not elapsed to warrant favorable action being taken on this pardon application at this time."

NOTE:- There are many letters which have been written to Governor Culbert L. Olson by persons in Southern California recommending that commutation of sentence be granted Young. Detailed mention of the persons writing the letters will be found copied elsewhere in this narrative. There are 19 petitions on file addressed to Governor Culbert L. Olson signed by hundreds of citizens of Los Angeles, Ventura, Orange, and San Bernardino Counties recommending that the death sentence of applicant be commuted to life imprisonment.

NOTE:- There will be found attached to, which is made a part of this narrative, copy of Confidential Psychiatric Report dated May 25, 1941 as submitted to this Board upon request by D. G. Schmidt, M. D., Resident Psychiatrist at San Quentin Prison.

NOTE:- Doctor Aaron J. Rosanoff, Director of the State Department of Institutions, was requested by this Board to make a psychiatric examination of Young at San Quentin Prison. In compliance  
(continued on page "d")



(continued from page "c")

with this request, there will be found attached to this narrative copy of Doctor Rosanoff's written report dated June 10, 1941, setting forth his findings with reference to the above-named subject.

At the request of this Board, the State Division of Criminal Identification and Investigation detailed one of its investigators to make an investigation of this commutation application. In compliance with this request, there will be found attached to the narrative copy of written report of investigation submitted by Harry C. Hickok, Investigator, State Division of Criminal Identification and Investigation.

NOTE:- Ben Van Tress and Beecher S. Stowe, 724 Washington Building, Los Angeles, California, who were the attorneys for this applicant, were advised by this office that it would be agreeable for them to submit any written material such as Briefs, Petitions, etc. in behalf of Young. No reply was received from the above-named attorneys; however, it will be noted from the State Investigator's Report that when he called upon them they advised as far as they were concerned the case was closed.

There will be found attached to this narrative, however, a Supplemental Brief filed in support of Young's clemency application by Ernest P. Morgan, Attorney at Law, 310 Bradbury Building, Los Angeles, California; the same is made a part of the official record for the information of the Board members.

NOTE:- There will also be found attached to this narrative, which is made a part of same, a printed copy of State Supreme  
(continued on page "e")

(continued from page "d")

Court's Decision dated February 20, 1941 (known as Criminal No. 4324) which in conclusion stated that in view of the ample evidence to support the verdict, the absence of any errors in the record, and the soundness of the instructions given by the trial judge to the jury, the judgment and order of the trial court were affirmed.

NOTE:- Also attached to this narrative which follows page sixteen thereof, will be found Transcript of Hearing at San Quentin Prison held June 19, 1941 at which time this applicant was given an opportunity to tell in his own words why he feels he should not suffer the death penalty. The committee consisted of the following: M. Stanley Mosk, Executive Secretary to the Governor; Harry C. Hickok, Investigator for the State Division of Criminal Identification and Investigation; Lyle Eagan, Assistant Secretary of the Board of Prison Terms and Paroles at Chico; Paul Yarwood, Secretary, Advisory Pardon Board, and Marian Nelson, who served as stenographic reporter.

--ooOoo--

A. P. B. CASE NO. 156-1941

JUNE 20, 1941

State of California  
Department of Penology  
Division of Pardons and Commutations  
ADVISORY PARDON BOARD  
Sacramento, California

- - -

In Re:- Application for COMMUTATION OF SENTENCE FROM DEATH TO  
LIFE IMPRISONMENT  
Submitted By:-  
WILLIAM A. YOUNG, Condemned San Quentin No. 65410

CRIME .....	Mur. 1st Deg.	AGE .....	26 New
COUNTY .....	Los Angeles	NATIVITY .....	California
CONVICTED .....	By Jury	NATIONALITY ...	Spanish-American
DATE OF SENT.....	Aug. 19, 1940	EDUCATION .....	11 Years
RECD. AT S.Q.....	Aug. 22, 1940	OCCUPATION .....	Laborer & Shoe Maker
SENTENCE .....	Death	FAMILY .....	Parents
	(actual time)	HABITS .....	Liquors
HAS SERVED .....	10 Mos.	HEALTH .....	Good
DATE OF EXEC.....	Sept. 19, 1941		

(This applicant is presently confined at San Quentin Prison under a death sentence. He was originally scheduled to be executed on June 20, 1941; however, at this Board's request Governor Culbert L. Olson granted a ninety-day reprieve to Young, extending the execution date to September 19, 1941.)

TRIAL JUDGE .....	Pierson M. Hall, Los Angeles
DISTRICT ATTORNEY .....	Buron Fitts, by J. C. Galliano, Deputy, Los Angeles
DEFENSE ATTORNEYS .....	Ben Van Tress and Beecher Stowe, Los Angeles

- - -

This Application for Commutation of Sentence From Death to Life Imprisonment was officially referred by the Governor's Office on April 16, 1941 to the Advisory Pardon Board for investigation, consideration, and recommendation to the Governor. This action (continued on page two)

(continued from page one)

was authorized by letter of transmittal addressed to the Board dated April 16, 1941 and signed by M. Stanley Mosk, Executive Secretary to the Governor, which was included with the Governor's complete file in this case, now listed as A. P. B. Case No. 156-1941.

NOTE:- A copy of Transcript of Testimony taken at trial, is on file with this case and available to the Board members upon request.

A gun was used in the commission of this offense.

THE C R I M E (as set forth in letter to this Board dated May 5, 1941 written by District Attorney John F. Dockweiler):-

"This applicant was convicted of murder in the first degree by a jury. The jury failed to make any recommendation as to sentence, thereby sentencing him to death as prescribed by the Code. Applicant had been going with the victim in this case, Ruth Lugo, a married woman, and said victim had refused to marry applicant because her four children by a former husband would sooner or later cause trouble between applicant and herself. Applicant made several threats upon her, saying in writing to her that unless he could have her he would fix her so no one else could. Two days later he went down town and purchased bullets for a gun which he had previously stolen and on the following day purchased some Mexican records, went to victim's house and, while playing these records, making love to her, shot her twice in the left breast, killing her almost instantly. He thereupon shot himself and the gun jammed. Witnesses hearing the shots came in and took the gun away from him. Immediately upon being taken to the General Hospital and believing he was about to die, applicant made a complete confession, giving the above facts. However, a few days later, upon the realization that he was going to live, he attempted to repudiate this confession by claiming that the victim was going to commit suicide and had shot him before shooting herself. He did not take the stand at the trial and offered no testimony whatever.

"The customary appeal was made to the higher Court and the sentence of the Superior Court was therein affirmed. Attached herewith you will find copies of the first and second statement made to the police officers by applicant. The letter mentioned in one statement as having been written by applicant to his mother and in which letter he asks the mother's forgiveness for the offense he is about to commit, was introduced in evidence and, upon the completion of the trial, was filed with the other exhibits in the Clerk's Office. However, this letter has been withdrawn by the mother of applicant and it is impossible to give you a copy of this document."

This applicant made the following statement on his formal Application for Commutation of Sentence from Death to Life Imprisonment, dated April 10, 1941 at San Quentin Prison, setting forth reasons why he believes clemency relief should be granted him by the Governor:

"Because I am not guilty. Every witness for the State, gave false testimony at my trial while under oath. If paraffin tests had been taken, I would of been acquitted."

This applicant on May 9, 1941 from San Quentin Prison wrote Governor Culbert L. Olson the following letter, which was written in behalf of his commutation application:

"I am writing to you to say that I am not guilty as charged.

"And that I am without funds to have my case investigated, as it should of been done in the beginning.

"The Attorney I had was from the Mexican Consul. He did not investigate my case, and failed to follow my advice, he even refused to let me take the stand in my defense.

"He promised to have paraffin tests taken, which would of gotten me an acquittal. But he did not have them taken. He also refused to have the mother of the deceased testify at my trial. The mother was the only one to enter the room first, she also saw her daughter shoot herself, and saw when I took the gun away from her daughter.

"Further more Your Excellency, there are affidavits now filed at the Supreme Court, proving I was not Guilty in 1935. And yet I was sent here for three years and a half.

"This Attorney I had was Ben Van Tress, he did not even file a brief for me at the Supreme Court. Yet the Supreme Court upheld the conviction. And they call this justice.

"But my appeal to you is, to please sand me an Investigator to talk to me up here.

"As I want Justice, in my case. Not like I was framed in 1935 please."

**NOTE:-** Ramon Welch, organizing Secretary of the National Congress of the Spanish Speaking People of the United States of America, P. O. Box 802, Los Angeles, California, wrote Governor Culbert L. Olson the following letter dated May 26, 1941 in behalf of Young and recommending that his death sentence be commuted to life imprisonment:

"We sigh to bring to your attention a case which has attracted considerable attention among the Spanish-speaking Americans here: the case of Mr. William Young, now sentenced to death in San Quentin. The case is rather peculiar in two respects.

"First, the question of the guilt or innocence of the prisoner is not the main object of controversy. Charged with the murder of his sweetheart, Young never once took the witness stand; his attorney mapped out the defense on the theory of a 'suicide pact' between the two, which pact apparently never existed. Trusting his lawyer, Mr. Young thought that the former would present the case as it actually happened; when he did not do so, the entire case failed, and the real issues did not assume their proper proportions.

"A study of the letters of Young to his mother show the abnormal mental state of the youth, and reveal the real motives of the murder, which was certainly not of a malicious type.

"The issue with which we are concerned is that a person, by reason of circumstances, may be prevented from taking the witness stand to speak in his own behalf, and yet may receive a death penalty. There is something sinister in the thought that death might be inflicted without the legal prerogatives of the defendant being exercised, as for example, through ignorance or malicious intent of the defendant's attorney.

"Second, recent cases of murders of a malicious type have resulted in prison sentences rather than the death penalty, yet the Young case, which shows an act committed under highly emotional circumstances, has been treated with great and unusual severity.

"In view of these facts, we urge and request that the sentence of Mr. Young be commuted to one of life imprisonment."

**NOTE:-** There are 19 petitions on file addressed to Governor Culbert L. Olson signed by hundreds of citizens of Los Angeles, Ventura, Orange, and San Bernardino Counties recommending that the death sentence of applicant be commuted to life imprisonment.

The following-named persons have written letters to Governor Culbert L. Olson in behalf of Young and recommending that his sentence be commuted to life imprisonment. These letters will be gladly shown and read to the Board members upon request:

Mr. Vernon J. Crosswhite, Southwest Progressive Community Builders, care of Ernest P. Morgan, 304 S. Broadway, Los Angeles.

Mr. Pablo Chavez, President, Mr. Eirilo Gomez, Secretary, United Cannery Agricultural Packing & Allied Workers of America, local 190, P. O. Box 426, Orange, California.

Rafael P. Valencia, President, Mr. Jacinto Chavez, Secretary, Club Pro Congreso, Local No. 3, Anaheim, California

Mr. M. R. Labastida, President, Mr. Reyes Juarez, Secretary, Alianza Hispano Americana, P. O. Box 134, Fullerton, California.

Jay W. Jordan, 2260 West 27th Street, Los Angeles, Calif.

Fidel P. Castro, President, Comision Honorifica Mexicana, P. O. Box 156, Placentia, California.



Apolinas Estrade, President, Pedro Mena, Secretary,  
Campamento Victoria No. 73, De la Orden de Los Lenadores  
Del Mundo, Anaheim, Calif.

Guadalupe Pacheco and Samuel R. Sandoval, 1490  
Murchison Street, Los Angeles, California.

Pablo Castillo, President, Benjamin Urena, Secretary,  
Logia 'Francisco Sarabia No. 24', Sociedad Progresista  
Mexicana, Anaheim, California.

Mrs. Guadalupe A. Estrada, President, Mrs. Catalina  
M. Diaz, Secretary, Grove 'Lazaro Gardenas' No. 58, Forest  
Woodmen Circle, Anaheim, Calif.

Rev. James Tort, C. M. F. Pastor, Claretian Missionaries,  
Our Lady of Solitude, 4553 East Brooklyn Avenue, Los Angeles.

Rev. S. Emaldia, C. M. F. Pastor, Claretian Missionaries,  
100 Sunset Boulevard, Los Angeles, Calif.

Rev. James A. Kirkham, 486 East Forty-sixth Street,  
Los Angeles, California.

Rev. Helen McGee, 1299 W. Jefferson Boulevard, Los  
Angeles, Calif.

Rev. Zudah Belle Cordor, 343 South Olive Street, Los  
Angeles.

Rev. Henry Vandersluis, 1801 South Bonnie Brae,  
Los Angeles, Calif.

A. L. Morgan, Ph. D., 637 North Bronson Avenue, Los  
Angeles, Calif.

Rev. Joe B. Davis, 1895 West Jefferson Boulevard, Los  
Angeles, Calif.

Rita Parra, President, F. P. Roma, Secretary, 131½  
North Savannah, Los Angeles, Calif.

Rev. W. B. Black, The Huntington Park Gospel Tabernacle,  
1157 Coronado Terrace, Los Angeles, Calif.

Juan D. Rivera, Secretary, Mr. M. S. Lopez, President,  
National Congress of Spanish Speaking People of the U. S. A.  
Local No. 6, 630 W. First Street, San Pedro, Calif.

Alberto H. Renteria, President, National Congress of  
the Spanish Speaking People of U. S. A., Local No. 1, 233  
S. Broadway, Los Angeles.

Loren Miller, Attorney at Law, 1105 East Vernon Ave.  
Los Angeles, Calif.

Mrs. Carrie S. Craton, Morning Star Mothers, Met Sta,  
Box 6197, Los Angeles, Calif.

J. Guadalupe G. Garcia, President, Pascual R. Ferranes,  
Secretary, Comite Auxiliar Mexicano, Pacoima, Calif.

Charles Beckman, President, Southwest Progressive Com-  
munity Builders, 315 East 42nd Place, Los Angeles, Calif.

Mrs. Delia Pena, President, Paul S. Gomez, Secretary,  
Congress of Spanish Speaking People of U. S. A., Westminster,  
Calif.

Pablo Castillo, President, Emilis Martinez, Secretary,  
Mexican Honorary Commission, P. O. Box 182, Anaheim, Calif.

Mrs. Elizabeth E. Young, 3758 South Main Street, Los Angeles, Calif.

Alfonso Lopez, President, Cecilio Ybarra, Secretary, P. O. Box 1003, Puente, Calif.

Max Sancedo, President, David Tavernier, Secretary, Club Pro-Spanish American Congress of U.S.A., Local No. 5, Route 1, Box 105 F, Shafter, Calif.

Ramon Sandoval, President, Antonia C. Mendez, Secretary, 215 1/2 South Spring Street, Los Angeles.

Rev. Edith P. Hudson, 1444 East 55th Street, Los Angeles, Calif.

Janie Sorden, 1420 East 55th Street, Los Angeles, Calif.

Rev. Wm. McCallum, Huntington Park Gospel Tabernacle, 7109 Santa Fe Ave., Huntington Park, Calif.

Rev. B. M. Berntsen, Pastor, Huntington Park Gospel Tabernacle, 7109 Santa Fe Ave., Huntington Park, Calif.

Rev. Aldo Lampson, 1856 E. 68th St., Los Angeles, Calif.

Rev. Myrtle Brent, 8627 Plenka Avenue, Los Angeles, Calif.

J. Usquiano, Vice President, Phil Usquiano, Secretary, National Congress of the Spanish Speaking People of the United States, Box 643, San Diego, Calif.

Arthur C. Hohmann, Chief of Police, City of Los Angeles (by C. B. Horrall, Deputy Chief) recommended against the granting of commutation of sentence to Young, which will be noted from his letter to this Board dated April 30, 1941:

"Re: William A. Young.

"With reference to commutation of sentence from death to life imprisonment on the foregoing subject, our investigation disclosed this to be a premeditated and brutal murder of a young woman who was the mother of several children and whose actions throughout did not indicate that she provoked the offense.

"When first arrested Young was suffering from a gun shot wound which was self-inflicted and when he believed his life was in danger and that he was on his death bed, he made a written confession relating the manner in which the murder was committed. After he survived, he repudiated this first confession and made a subsequent statement which was very incongruous and self-serving.

"In the second statement he attempted to place the blame on the victim saying that he was attempting to keep her from committing suicide at the time she was shot. All of the physical evidence and subsequent investigation refutes this alibi and everything pointed to it being a murder for which the supreme penalty should be paid. There was no reason why parafin tests should have been made at the time as they would neither have proved or disproved his statements either in the first or second instance.

"The testimony given at the trial appeared to be truthful and straight forward and there was no indication of perjury.



During conversation with the defendant he frequently referred to his political activities in the last gubernatorial election and stated that he would not hang on account of this.

"Defendant's attitude was very arrogant and he did not show any remorse for his act. He has a long criminal record, the sorrow of which seems to fall on his poor parents who have employed counsel in every case of his transgressions.

"We are in possession of several letters authored by the defendant and sent to the deceased some thirty days prior to the crime, the contents of which clearly indicated his intentions of murdering her provided she would not marry him.

"In view of these circumstances we do not recommend the granting of Commutation of sentence from death to life imprisonment, to the applicant Young."

NOTE:- E. W. Biscailuz, Sheriff of Los Angeles County, by P. M. Kunou, Captain, Bureau of Investigation) on April 29, 1941 advised this Board by letter that he did not desire to express any views or make any recommendation in the matter of this commutation application.

J. C. Galliano, the Deputy District Attorney of Los Angeles County who prosecuted this case at trial, recommended unfavorably to the Advisory Pardon Board with reference to this commutation application, which will be observed from his letter dated May 15, 1941 copied below:

"In re William A. Young, condemned, San Quentin No. 65410, convicted in Los Angeles County August 19, 1940, Murder in the First Degree, and who is at present confined in San Quentin and is scheduled to be executed June 20, 1941.

"This defendant was convicted of Murder in the First Degree by a jury. The jury failed to make any recommendation as to sentence, thereby sentencing him to death as prescribed by law.

"At the time of the murder this defendant was going with the victim in this case, Ruth Lugo, a married woman. The victim had refused to marry the defendant because her four children, by a former husband, would sooner or later cause trouble between them. This defendant made several threats upon her, saying in writing to her 'that unless he could have her, he would fix her so no one else could'. After this threat, and two days before the murder, this defendant purchased bullets for a gun that he had previously stolen, also purchased some Mexican records, went to the victim's house, and while playing these records and making love to the victim, shot her twice in the left breast, killing her almost instantly. Just before the murder the defendant wrote the following letter to his mother:

"Please forgive me for taking things into my own hands. Even though right, this woman is not a young girl any more and is the mother of four children. I still love her and want her for my wife. Of all the other girls and women I have met I never did feel the same towards them as I do towards this woman that I love with all my heart. But please forgive me for taking this way out. But without being able to have her for my wife I am fixing it so she will be no one else's wife. As a last favor on this earth I ask to be burried in the same casket and grave as she is, so that I can at least have her in death. Mother, do not cry for me as I am not worth it. You know that I have been a bad boy when I was small. And you are wondering how I can take Ruth's life and my own at the same time. Well! All I can say is that I love her so much it is driving me crazy. So as long as she does not love me enough to marry me, I find that this is the only way out for me, and I am not drunk or crazy. I am in my right mind. Other men have given their lives for women, because they loved them so much they could not live without them. That is the same way I feel about Ruth. If I can't have her I don't want anyone else. For there would never be anyone else to take her place. I know, because I've been around and know just what I want. So why should I go through life suffering for the rest of my days, when it is so simple, my way. You are probably thinking why I didn't pick on a girl who was younger and single, one who was alone. I am sorry, dearest mother, but I just happen, some way or other to fall in love with Ruth. And always will. I only hope that she can find some way to forgive me for what I am about to do. After she reads this, she will truly know how much I love her, but it will be too late for her to change her mind because I have made up my mind on taking her life and my own. So please do not hate her or her people for what I have done. And try and forget about me. Your loving son," P.S. My only hope is to have Ruth in a casket with me and in the world beyond, that is, if there is one. Goodbye. Now, I can rest."

"The defendant was very ably and well represented at the trial, and as the prosecutor in this case I believed then, and do now, that this was a cold-blooded, willful, deliberate and premeditated murder and I firmly believe that the original sentence of death should be carried out. I, therefore, am opposed to the extension of further leniency to this defendant."

NOTE:- Baron Fitts was District Attorney of Los Angeles County at the time of this trial.

John F. Dockweiler, the present District Attorney of Los Angeles County, (by H. J. Beardsley, Deputy) advised this Board by the following letter dated May 5, 1941 that he was opposed to the extension of further leniency as regards this applicant:

"Replying to your communication of April 24th, with respect to the Application for Commutation of Sentence from death to life imprisonment, submitted in behalf of WILLIAM A. YOUNG, condemned San Quentin No. 65410, convicted in this County on August 19th, 1940, of murder in the first degree, and who is presently confined at San Quentin and is scheduled to be executed June 20th, 1941.

"Facts: (Note: Identical to crime statement set forth on page two this narrative---p. y.)

"The offense of which this applicant was convicted was unquestionably a wilful, deliberate and premeditated murder, there being nothing in the file of a mitigating character, and it is the opinion of this office that the original judgment of the Court, following the verdict of the jury, should stand. We are therefore at this time opposed to the extension of further leniency as regards this applicant."

Honorable Pierson M. Hall, Judge of the Superior Court of Los Angeles County and the trial judge in this case, recommended that commutation of sentence be granted Young, which will be observed from his letter to this Board, dated April 25, 1941 copied in full below:

"Reference is made to your letter of April 24th, 1941, advising that the application for commutation of sentence from death to life imprisonment filed by William A. Young has been referred to you, and that inasmuch as I was the Trial Judge you desire my recommendation.

"The trial was fairly conducted. I do not believe that any of the witnesses for the state perjured themselves or gave false testimony. From hearing the evidence, the killing was in my judgment deliberate murder; not however for gain, nor yet for revenge, but committed at the dictates of a mind which could not be classified as insane, yet which had a distorted sense of values.

"I recommend commutation. Certainly not on account of the reasons advanced by the applicant but solely because I am not convinced that the taking of this defendant's life by society will do any good."

A Certificate of Conduct dated April 25, 1941 addressed to Governor Culbert L. Olson reveals that applicant's conduct at San Quentin since date of incarceration, which was August 22, 1940, has been good; further, that he has served a term sentence equal to about 11 months.

This applicant, William A. Young, from San Quentin Prison on April 27, 1941 advised this Board in writing that he had not paid money to any person to obtain executive clemency for him--or that he had entered into agreement with any one to pay money in the event he was successful in obtaining a commutation of sentence from the Governor.

NOTE:- Attached to this narrative, which is made a part of same, will be found copy of applicant's past criminal record, as furnished this Board upon request by the State Division of Criminal Identification and Investigation.

SAN QUENTIN PRISON  
PHOTO OF APPLICANT



--ooOoo--

PREPARED BY:

PAUL YARWOOD, SECRETARY  
ADVISORY PARDON BOARD

(See next page for additional  
information)

**CALIFORNIA STATE DIVISION OF  
CRIMINAL IDENTIFICATION AND INVESTIGATION  
SACRAMENTO**

The following is a transcript of the record, including the most recently reported data, as shown in the files of this Division concerning our number

**C. H. STONE**  
**Chief of Division**

MEXICAN 5-92 140 20-34

A.  
Billie/YOUNG:

ALIAS: Billie Espinosa YOUNG: Guillermo Espinosa YOUNG:

RECEIVED OR RECEIVED	DEPARTMENT AND NUMBER	NAME	CHARGE	DISPOSITION
-10-32	Brakley 5035	Billie Espinosa YOUNG	Invest. Prowling.	Rlsd. to leave
1-20-33	LA 30526-A-13	Billie YOUNG	Surp. Robb.	
9-7-34	Yuba Co. 1713	Billie YOUNG	Burglary.	
1-14-35	LA CO. 210753	William A. YOUNG	Burglary.	
4-13-35	SO 57343	William YOUNG	Burg. 2nd. from LA Co. for 1-15 yrs. Disch. 9-8-38.	
8-22-40	SO 65410	William YOUNG	Murder 1st. from LA Co. for DEATH (Case on appeal)	



**Federal Bureau of Investigation**  
**United States Department of Justice**  
**Washington, D. C.**

Form T-2

June 12, 1941 P

The following is the record of FBI number

628172

*J. E. Hoover*  
 Director

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
St. Bernard, Calif.	Willie Young, #5025	6-10-32	inv. - prowling	rel. to leave
St. Los Angeles	Willie Young, #5052	1-20-33	susp. - robbery	1-25-33 rel.
St. Marysville, Calif.	Willie Young, #5713	9-7-34	burg.	9-28-34 3 yrs. prob. first, 4 mos. Co. J.
St. Los Angeles	William A. Young, #210758	1-11-35	burg.	1-11-35, burg. 2nd., 4-3-35 San Quentin
St. Los Angeles	William Young, #57542	4-13-35	burg. 2nd.	1-15 yrs. term fixed as 5 yrs. trans. to Kd. Camp #25 10-1-37 - rel. to Pr. from Camp #25 7-11-38 - disch. 9-3-38
St. Los Angeles	William Young, #219939	6-11-40	murder	8-22-40 rel. to San Quentin
St. San Quentin, Calif.	William Young, #65210	8/22/40	murder 1st (190-C)	death *Case on appeal.

\* Represents notations unsupported by fingerprints in FBI files.

NOTICE: THIS RECORD IS FURNISHED FOR OFFICIAL USE ONLY

16-15190

**Federal Bureau of Investigation  
United States Department of Justice  
Washington, D. C.**

The following is the record of FBI number

623172

J. E. Hoover  
Director

*Director.*

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
* *	Admits: 1-1-31, manslaughter, Los Angeles; 7 yrs., 3 mos. William A. Young, #30526-M-13 PD, Los Angeles, Calif., arr. 6-10-40, murder; murder 1st - death sentence D40 8-19-40.			

The following is the record of FBI number 628172

J. E. Hoover  
Director

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
<p>The above individual is identical with BILLIE A. YOUNG, subject of your letter dated May 28, 1941.</p>				
<p>CC-Chairman, Dept. of Penology Div. of Pardons and Commutations Adv. Pardon Board State Capitol Sacramento, Calif.</p> <p>Attn: Mr. Paul Yarwood Secretary</p>				

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NOTE:- There will be found attached to, which is made a part of this narrative and immediately follows this page, copy of Confidential Psychiatric Report dated May 25, 1941 as submitted to this Board upon request by D. G. Schmidt, M. D., Resident Psychiatrist at San Quentin Prison.

(See next page--  
page 12 for additional  
information)

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 73: Materials Relating to the Clemency of Wesley Robert Wells  
(March 31, 1954)**

Governor Goodwin J. Knight today issued the following statement:

"In my judgment executive clemency should be granted to Wesley

Robert Wells. I cannot stress too emphatically that my decision in this matter has been reached in spite of rather than because of the abnormal pressures exerted by certain extremist factions whose efforts neither aided the prisoner Wells nor the reaching of a proper conclusion.

"There is no doubt that the long record of the court decisions, the prison reports, the doctors' examinations and all other information show that Wells has had a bad criminal and prison record. However, his execution is not to be determined on that bad record.

"It then becomes pertinent to inquire, if despite that record, the proven facts concerning the attack on the Guard, Brown, is a proper case for executive clemency?

"Though the strictly technical legal findings involved can be upheld, there were many rulings on evidence and fact in the various courts and judicial opinions where there were paper-thin differences and distinctions enunciated. In such cases executive clemency may logically be exercised.

"I, therefore, under the power vested in me as Governor of California propose to commute the death sentence pronounced for April 9, 1954, upon Wesley Robert Wells to life imprisonment without possibility of parole, subject to the favorable recommendation of the majority of the Justices of the Supreme Court of California as required by Article VII, Section 1 of the California Constitution.

"Consistent with the foregoing I also propose to commute the death sentence pronounced for April 9, 1954, upon James Francis Silva to life imprisonment without possibility of parole, subject to the favorable recommendation of the majority of the Justices of the Supreme Court of California as required by Article VII, Section 1 of the California Constitution.

"I have this day communicated my request for the recommendation of the Justices of the Supreme Court to the Honorable Phil S. Gibson, Chief Justice of the Supreme Court of California."

\* \* \*

# GOVERNOR'S OFFICE

## INTER-OFFICE MEMORANDUM

SACRAMENTO

TO Governor Warren

DATE April 20, 1949

FROM James Welsh

SUBJECT ROBERT W. WILLIAMS  
alias Wesley Rob't Wells  
Extreme penalty case  
Execution date--May 27, 1949

### FACTS:

Robert W. Williams, alias Wesley Robert Wells, San Quentin No. 24155, negro, 39 years old, was serving an indeterminate life sentence at Folsom Prison at the time of the return of this indictment for the violation of Sec. 4500 of the Penal Code, an assault with malice aforethought, upon one Noble E. Brown, a correctional officer at Folsom State Prison.

He was convicted by a jury August 28, 1947. The plea of not guilty by reason of insanity was withdrawn by Wells during the course of the trial.

The judgment of the trial court imposing the death penalty was affirmed by the Supreme Court on January 25, 1949. The majority opinion was written by Justice Schauer, in which Chief Justice Gibson and Justices Shenk and Spence concurred. Dissenting opinion was filed by Justice Edmonds, which was concurred in by Justice Traynor. Justice Carter filed a separate dissenting opinion.

Wells had been convicted of a prior offense for violation of Sec. 4502 of the Penal Code, and was committed for a term of not less than five years, as provided by that section. Prior to the conviction on violation of S. 4502, P.C., he was convicted of manslaughter while in prison and two other felonies, by his own admission.

A statement of facts as digested by Dave Leonard of the Attorney General's office is attached.--pages 2 to 30, inc.

BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION;

Criminal record attached.

RECOMMENDATIONS:

Attorney General, Fred N. Howser, by David K. Leonard, Mar. 17, 1949:

"The numerous violent and vicious acts of Wells both before and after assault for which he was committed against the correctional officers of Folsom Prison had much to do with the failure of the Adult Authority to fix his indeterminate sentence. His defiant attitude towards these officers plainly showed his refusal to conform to the rules of the prison and an unreasonable hatred for all prison officers as a class, particularly when they did not meet with his approval. He evinced little or no hope for rehabilitation. At the time of the assault he was serving a life sentence for manslaughter while in prison. A similar conviction was affirmed in *Finley v. California*, 22 U.S. 28, where the United States Supreme Court held the classification given section 4500, Penal Code, was not arbitrary, but is based upon valid reasons and distinctions, that there could be no extension of the term of imprisonment for the crime this class might commit, and that in the enactment of the statute, the State Legislature did not transcend its powers.

"The record forcibly shows there is no possibility of redemption by appellant. His constant physical outbursts and rebellion to every restraint and rule of discipline imposed by the prison rules, his violent assaults on prison guards, his insolent behavior to prison officers, on whom he heaped one humiliation after another in the presence of other inmates, could only tend to destroy good order and discipline in the prison. In the face of the fact appellant knew the legal consequences of his acts, he, nevertheless, invited the punishment imposed on him.

"The Attorney General has no recommendations to offer."

John Quincy Brown, District Attorney of Sacramento County, Mar. 10, 1949:

"I note that you ask the recommendation of this office with regard to the question of possible executive clemency in commuting the death sentence to life imprisonment. On the 10th day of April, 1947 the defendant was serving a life sentence in the State Prison at Folsom for the crime of possession of a sharp instrument by a convict. On that date Wells was brought before a Disciplinary Committee which was

Wesley Robert Wells -

meeting in a Board Room to be heard on charges preferred by one Noble E. Brown, a Correctional Officer. Wells was brought before the Committee and when he became truculent and abusive to an Associate Warden, was ordered from the room. The defendant waited outside the Board Room until Mr. Brown came out. Mr. Brown passed Wells who was sitting on the floor and walked down the corridor. After Mr. Brown had passed, Wells arose from the floor and arming himself with a heavy cuspidor, hit him in the face and forehead, causing serious and permanent injury. This inmate who is well known to the prison authorities has served a great many years at Folsom Prison and has had an extremely bad record at that institution. Subject has committed assaults on various occasions on other inmates and on officers. The crime for which he was serving at the time of the commission of the offense, resulting in his more recent conviction, involved an assault with a knife on another inmate. On September 19, 1931 subject was convicted of manslaughter involving the death of one Emory Hudson, another inmate who was stabbed by Wells.

"This man's complete record within the Institution is readily available to members of the Adult Authority and to the officers of the prison. He has made it evident that he is completely incorrigible and that so long as he lives will be a menace to the lives and safety of the inmates of any institution in which he may be confined, and to the officers and guards thereof. Subject has threatened prison officials on a great number of occasions and has resented any action taken by officers to discipline or otherwise correct him.

"The defendant was ably represented at all stages of the proceedings, during his trial and on appeal, by counsel. The State Supreme Court gave the matter very thorough attention in affirming the judgment.

"The District Attorney's office believes that the law should be permitted to take its course in this case. The defendant has been accorded many chances heretofore and has not taken advantage of the opportunities afforded him. He has been almost continually confined in prison since he was nineteen years of age, a period of twenty years. It is the writer's belief that rehabilitation of this man is out of the question."

Donald Cox, Sheriff of Sacramento County, Mar. 10, 1949:

"The Sheriff, as well as the deputies who had close contact with this subject, feel and recommend that his sentence should not be commuted to life imprisonment due to the fact that this man is definitely a menace to society and a killer if given the opportunity. We therefore do not recommend any leniency whatsoever."

No recommendation has been received from the trial judge, Judge Coughlin, as of this date.

C. K. Curtright, attorney at law, Sacramento, the defense attorney,  
March 18, 1949:

"First, it is my opinion that Wells is medically insane, although perhaps not legally so within the accepted definition. I have been shown a report by one of the physicians at Folsom Prison, making a diagnosis of schizophrenia, based upon an examination of Wells. In addition, the man's conduct for many years persisted in where any sane person would realize both the futility and danger of his continued misconduct, leads me to believe that his long record of incorrigibility and infractions of prison regulations may be accounted for only on the basis of a mental aberration. My first suggestion would therefore be that he be thoroughly examined by competent experts in the field to determine whether or not he is actually medically insane.

"In the second place, although a majority of the members of the Supreme Court of the State do not agree with me, I feel that the error in the exclusion of medical testimony, tending to negative the existence of malice as an essential element of the crime charged in this case, is prejudicial. The entire case was tried upon the theory that if the acts done by Wells were done with malice aforethought as required by the statute, his conviction was both certain and proper. There was never any great amount of doubt as to the facts of the transaction during which Guard Brown was injured, but the state of mind of Wells as to whether or not he entertained any malice at the time of the altercation, was, as the majority opinion of the Supreme Court points out, a crucial issue in the case. An examination of the transcript will reveal that a great deal of the time consumed by the prosecution was spent endeavoring to demonstrate that Wells entertained malice towards custodial officers as a class. A vast mass of evidence on that score was received by the Court. The only evidence on the part of the defense which was available to it was the statements of Wells and the evidence of the physicians; the rejection of the medical testimony therefore left the defense entirely dependent upon the unsupported and possibly, subserving declarations of Wells himself. Two of the jurors made affidavits in connection with Wells' Petition for Rehearing in the Supreme Court in the course of which one of the jurors stated that he might have voted for an acquittal had the evidence been produced before the jury.

"I think it is apparent that the prosecution and the trial judge and the members of the jury and the three dissenting members of the Supreme Court have assigned to the error committed in the exclusion of this testimony, its proper place as being prejudicial; all concerned treated the matter as one of prime importance, if not the primary factor, of the case, and I cannot agree with the holding of the majority of the Supreme Court that the outcome would have been no different had the evidence been admitted. I feel, therefore, and not entirely from a partisan viewpoint, that some doubt exists as to the propriety of Wells' conviction.

"Mr. White has suggested that I state in my letter to you what disposition should be made of Wells if his sentence should be commuted. It is apparent that further confinement in a maximum security prison, such as Folsom, will not work the rehabilitation of this convict. This, however, is not equivalent to saying, as the majority opinion of the Supreme Court indicates, that the only possible treatment for him would be the infliction of the death penalty. Believing, as I do, that the man is medically insane, my suggestion would be that in the event you see fit to commute this sentence, Wells be committed to an institution for the criminally insane where the custodial restraint will certainly be no less than at Folsom and he may receive whatever benefit treatment for the alleviation of his mental treatment will afford. This man possesses talents and mental attainments extremely unusual in one of his race who has had no greater opportunity than he has had, and my feeling in the matter is that if his mental condition can be alleviated his conflict, both with society at large and with the authorities having his custody, can possibly be resolved.

"I must add that in this letter I have tried to be as objective as possible regarding the problem confronting you despite the fact that, during the two years since I was appointed as one of Wells' counsel, I have come to entertain for him a very considerable liking and respect, notwithstanding he bears the reputation of, and very probably is, an extremely violent, unpredictable and dangerous individual. My feeling is, as I have said, that the man is probably medically insane and that he was not duly convicted according to law and that the ends of justice will be served by his confinement and treatment in an institution properly equipped to handle individuals such as he."

Attached also are reports submitted by investigators of the Department of Justice:

1. An interview with James Robinson, correctional officer, Folsom Prison, Mar. 15, 1949.
2. Interview with Wm. J. Ryan, Associate Warden in charge of custody, Folsom Prison, Mar. 15, 1949.
3. Interview with Oscar Jensen, Correctional Officer, Folsom Prison, Mar. 15, 1949.
4. Interview with Albert Mundt, Chief Deputy District Attorney, Sacramento County, Mar. 26, 1949.
5. Crime Report submitted by the Division of Criminal Identification and Investigation, Dept. of Justice, Mar. 24, 1949.



PSYCHIATRIC RECORD:

Dr. Toller and Dr. Miller submitted a detailed psychiatric report, July 31, 1947:

"The accused is a colored male, 38 years of age, born May 23, 1909 at Ft. Worth, Texas, single, protestant. He states he is charged with assault by a convict serving a life sentence.

"The past history reveals that his parents separated when he was an infant, he was raised by his mother until he was 8 years of age, when his mother died. Since then, he has been more or less on his own; he had a place to live with his uncle if he cared to take advantage of it. He had two sisters; one was accidentally killed by a man who was 'playing with a gun'; one sister died of cerebral hemorrhage. He attended special school from 6 or 7 years of age until 14 years of age; reached the 7th grade. He never attended regularly; went only when he wanted to. He has always been interested in sports, and was considered to be a good athlete. He has supported himself by stealing mostly, has tried a few jobs, but never could hold a job. He has been almost continually confined in prison since 19 years of age. He has had no serious illness. In 1943 he had a hemorrhoidectomy. In 1944 he underwent surgery for closure of wounds sustained in a knife fight. He has a scar over the left eye, which he claims was caused in 1944 when struck by a guard. He has a scar on the head which he claims was caused in 1938 or 1939 when struck by a guard. He denies epilepsy and alcohol, occasionally smoked marijuana. He refuses to discuss his sexual life.

"On direct examination, he is quiet, pleasant, and cooperative; speech is coherent and rational. He first entered prison in 1928, because of possession of stolen property. When he came into prison he was young and frightened because he had heard how bad some of the inmates of the prison were. It was his intention to be as tough and bad as the other inmates and he started out to earn a reputation. However, he allowed himself to get out of control, and was transferred to Folsom Prison. There he was told by Warden Larkin that he would soon 'be eating out of the warden's hand', but he refused to allow himself to become submissive. If anyone did him a wrong, he usually repaid that person by violence. He did this both to guards and other inmates. This has resulted in considerable difficulty and inability to adjust to prison life. He has been involved in innumerable fights and cutting scrapes. He has been cut up by other inmates and he, himself, has killed another inmate. He has spent much time in disciplinary quarters.

"He has felt that Bill Ryan, associate warden, is responsible for his trouble, because he directs the guards as to how to handle him. He feels that since his present trouble they have tried to annoy him, by slamming the door, making unnecessary noise. He claims they talk about him outside of

his door; a few nights ago he heard them say, 'He's asleep'. To show that he wasn't asleep, he threw a bucket of water on the guard. He suspects that his food may be poisoned, but he can't be certain; his suspicions were aroused because his stomach felt peculiar. In the past two months, the guards have been 'walking pretty soft.'

"Early in April 1947, he was taken to the warden's office. He states a guard had previously struck him. While in the warden's office, he picked up a cuspidor and threw it at one of the guards. He says one guard was injured. He makes no denial of the incident, 'whenever anyone hits me, I'm going to hit them back'. He claims he will fight whenever he is mistreated. He is impulsive and quick to anger. When angry 'I don't know nothing and I don't give a damn about anybody'. After it is all over he feels upset for hours.

"He is correctly oriented for time, place and person; general information is given correctly. He repeats 6 digits forward and 5 digits backward. He counts from 20 - 0 rapidly and accurately, memory is not impaired. There are no defects in arithmetical reasoning, comprehension, grasp, or abstract thinking elicited. On P.I.T., he scores an average intelligence.

"Summary: A 38 year old colored male, who has shown a-social behavior all his life. No psychotic symptoms could be elicited, but he has shown a paranoid trend. It is our opinion that he is sane at the present time and was sane at the time of the alleged offense."

The Supreme Court by a 4 to 3 decision confirmed the judgment. The opinion is attached.

STATE OF CALIFORNIA

INTER - DEPARTMENTAL COMMUNICATION

RETENTION PERIOD

Do not retain for filing ☐

Hold Until \_\_\_\_\_

Mr. Walter Dunbar  
Director of Corrections

Date: November 20, 1961

To:

File No.: 24155

Subject: WELLS, Wesley Robert

From: Department of Corrections, Sacramento 14

In accordance with your instructions, I am submitting a brief summary on the case of Wesley Robert Wells.

Wesley Robert Wells was received initially on July 28, 1928, for "Receiving Stolen Property". In July 1932, he received an additional commitment for "Manslaughter" as a result of his stabbing another inmate. He completed these sentences and was discharged in January, 1941.

On March 5, 1942, Wells was again received under commitment for "Car Theft". In October, 1944, he received an additional commitment for "Possession of a Weapon". This resulted from his stabbing another inmate.

On August 29, 1947, he received an additional commitment for "Assault by a Life Term Prisoner". (Section 4500 P.C.) This section carries a penalty of Death. This resulted from his throwing a crockery cuspidor at an officer, striking him on the head and shattering the cuspidor. The incident occurred immediately following Wells' appearance before the Disciplinary Court on charges of insolence.

During Wells' confinement in San Quentin and Folsom between 1928 and 1947, he had some seventy-five disciplinary infractions involving fighting, refusing to work, insolence, profanity and physical abuse to officers, gambling, and many other offenses. During Wells' confinement on Condemned Row from 1947 to 1954, he was involved in some forty disciplinary infractions involving extreme insolence to the Warden, Doctors, and Officers; fighting; and general non-conformance to rules and procedures.

Following the commutation of sentence on March 31, 1954, to "Life Without Possibility of Parole", he was removed from condemned row to the Reception Guidance Center at San Quentin for case work-up. He was transferred to the California Medical Facility at Terminal Island on June 3, 1954. His pattern of non-conformity continued there. In 1958, the Superintendent reported that his medical problem with ulcers had been resolved, that psychiatric

November 20, 1961

treatment had been continuous, and that the former assaultiveness and general aggressiveness had largely subsided. There had, however, been occasional outbursts of hatred toward officers, participation in homosexual acts, gambling, and extreme arrogance. Generally, he was able to control himself better than formerly.

In May, 1959, the case was brought to the attention of the Departmental Review Board consisting of the Deputy Director, the Chief of Medical Services, and the Supervisor of Inmate Classification, by the institution staff as a result of their findings that Wells had received maximum benefit from treatment offered at the California Medical Facility, that his presence was detrimental to the treatment program, and that there was an inmate clique preying on new inmates for canteen articles and homosexual activities which was managed by the non-participating Wells.

A letter from Superintendent King to Director McGee in August, 1959, set forth an extremely negative report of Wells' response to treatment and conformance to rules. After considerable staff review of the case, and trial for another six months by the Medical Facility Staff, a recommendation for transfer was considered by the Departmental Review Board in March, 1960. At that time, the Departmental Review Board, after discussing a proposed plan for the treatment of Wells with the Superintendent of the Correctional Training Facility whereby Wells would be placed in the general population with specific plans outlined, ordered Wells transferred to that institution.

The specific plans approved consisted of:

- (a) That Wells not be assigned to functions involving many areas of the institution.
- (b) His work assignment should be at a fixed post under direct supervision.
- (c) Jobs tending to bloat his status among other inmates were to be avoided.
- (d) Caution should be exercised to insure that disciplinary infractions would also be handled in a routine manner with neither unduly severe or unduly lenient penalties to be assessed.
- (e) That Wells be given opportunity to demonstrate his contention that he could satisfactorily adjust in a general population.


A letter on file from Governor Brown to the Chairman of the Adult Authority under date of November 23, 1959, indicated that the Governor had personally reviewed the Wells case, and that he was convinced that further executive clemency at that time was not possible. He did, however, leave the door open for further consideration if the Adult Authority should be of the opinion that such was appropriate after there had been some real and sincere change in attitude by the inmate.

November 20, 1961

In November, 1960, the Departmental Review Board again reviewed the Wells case. Wells had violated all of the conditions of his transfer by a continuation of his illicit activities. Wells was ordered transferred to the Adjustment Center at Folsom. Wells remained in the Adjustment Center at Folsom from December, 1960, until May, 1961. His case was again considered by the Departmental Review Board because of his becoming increasingly disturbed, his inability to adjust, and his threats to inmates and staff in order to bring attention to himself. At this time, the Departmental Review Board decided to place Wells in the Reception Guidance Center at the Medical Facility for an evaluation to see if some indication of a plan for a new approach to handling Wells might be forthcoming. Wells was diagnosed as: Sociopathic personality disturbance Dyssocial Reaction, with marked paranoid features, by the psychiatric staff. The Reception Guidance Center Staff felt that Wells was not as serious a problem as he had been in previous years but that his care and treatment still required a maximum of patience, tolerance, firmness, understanding, and psychiatric and medical supervision, which probably could best be furnished at the Medical Facility. Wells was so transferred on July 13, 1961.

Medical Facility Staff report that Wells is getting along well in light of his previous activities. He is working as a porter, doing well in therapy, and has not resorted to his "strongarm" activities since his transfer, to the best of their knowledge.

While he is apparently doing well now, this has only been for a four-month period. A longer period is required before an accurate evaluation can be made in view of his long record of maladjustment in the past.

  
A. G. Oakley  
Field Representative-  
Institutions

*Good Summary  
of Wells' prior  
Criminal History*

September 28, 1964

Mrs. John A. Winston  
510 South Kenmore Avenue  
Los Angeles, California 90005

Dear Mrs. Winston:

This will acknowledge receipt of your recent letter addressed to Governor Brown regarding Robert Wesley Wells,

In your letter you state that Mr. Wells has been in San Quentin since he was 17 years old, that he is now 59 years old, and that he has been there for 42 years. A check of the records of this office indicates that Mr. Wells is presently being held in prison pursuant to a conviction for violation of Penal Code section 4500 (assault by a life prisoner on a guard). At the time he committed this assault on the guard, he was being held in prison for a violation of section 4502 (possession of a dangerous weapon by a state prison inmate). Prior to these dates, Mr. Wells had first been received in prison in July, 1928, for receiving stolen property. Fourteen years later, in July, 1942, he received an additional commitment for manslaughter due to the fact that he stabbed another inmate to death. In March, 1942, after having been discharged from prison in 1941, he was returned to prison for car theft.

As a result of his assault on the guard in 1947, Mr. Wells received the death penalty. However, this sentence was subsequently commuted to life without possibility of parole by former Governor Goodwin J. Knight.

His record in prison has subsequently been reviewed by this office on a number of occasions, and the Governor has determined that his case does not merit the further exercise of executive clemency at this time.

Thank you for taking the time and trouble to write to the Governor regarding this case.

Sincerely

John S. McInerney  
Clemency Secretary

JSM:km

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 74: Materials Relating to the Clemency of  
Charles Evan Turville, Jr. (November 5, 1959)**

## Executive Department

State of California

COMPUTATION  
CHARLES EVAN TURVILLE, JR.

Charles Evan Turville, Jr., (San Quentin No. A-44955) was convicted December 27, 1957, in the Superior Court of the State of California in and for the County of Los Angeles, of the offense of first degree murder. He was originally scheduled to be executed on May 29, 1959. On May 5, 1959, he was granted a stay of execution by the Honorable William O. Douglas, Justice of the United States Supreme Court. His date of execution was thereafter refined for September 4, 1959.

Pursuant to my usual policy in all condemned cases, I have given very careful study to the record of this case. I have examined closely the reporter's transcript of testimony of some 2400 pages, neuropsychiatric, psychological, and sociological case studies, a case analysis made by the Attorney General, investigation reports submitted by the Department of Justice and the Adult Authority, and recommendations made by the District Attorney of Los Angeles County, the Chief of Police of Los Angeles, and numerous other materials bearing upon the case. Upon request I also conducted a personal hearing on September 1, 1959, to consider whether this might be a proper case for the exercise of executive clemency.

After consideration of the foregoing, I concluded that still further investigation was advisable in the interests of justice, and therefore, on September 3, 1959, I granted a reprieve to November 6, 1959. During this period I have made further study and investigation of this case.

The long record shows that on the evening of August 26, 1957, the victim, Milo Smith, had done considerable drinking before and during a round of bars in San Pedro. He had with him as companion a 17-year old boy. After the bars had closed, the victim and his companion, seeking still more liquor, encountered Turville (then aged 22) and Lamar Mitchell (aged 17). Smith gave Turville, a stranger to him, money with which to purchase an after-hours bottle and Turville then left. Failing in this quest Turville came back and attempted to return the money. Smith refused the money but instead invited the group to go to his own office. There he brought in more liquor and there was more drinking. During the several hours that followed, Smith displayed large sums of cash and boasted to these two newly-met, unemployed



## Executive Department

State of California

PAGE TWO

strangers of his wealth and of moneys supposedly in his office safe. Turville and Mitchell sought on several occasions to leave but were dissuaded from doing so by Smith.

Toward 5 a.m. Turville and Mitchell decided to rob Smith. They assaulted him, took currency from his pocket, and struck him numerous blows attempting to make him open the safe. Smith lapsed into unconsciousness. Turville and Mitchell, tried unsuccessfully to revive him and then fled. Smith died from internal hemorrhaging from his injuries. Both defendants were apprehended, both confessed, and were tried by the same jury. Mitchell was given life imprisonment. Turville was sentenced to death. Turville had been honorably discharged from the Navy only a few months before and had never been previously convicted of crime.

There is no substantial issue in my mind either of guilt or of the fairness of the trial. I am impressed however that this is a most unique case. The victim himself inexplicably accosted these young defendants, brought them to his office gave them drinks, and importuned them to remain while he displayed and talked of his wealth. Neither the robbery nor the fatal assault were planned beforehand, and the record is clear that the idea was not in their minds until virtually implanted there by the victim himself. Far from planning robbery, the record is undisputed that Turville earlier had tried to return Smith's money to him.

Although the felony-murder rule of this state takes no account of the fact that the death in this case was unintended, the peculiar surrounding circumstances here present may properly be considered in determining whether executive clemency, in the limited form of commutation from death to life, should be interposed.

I have considered too the fact that Mitchell, no less culpable than his co-defendant, was by law spared the death penalty because of his age, while Turville, a few years his senior and with no felony record whatsoever, received the death penalty.

I have therefore concluded in the circumstances of this case that equal justice warrants a commutation of sentence from death to imprisonment for life without possibility of parole.

Executive Department

State of California


PAGE THREE

NOW, THEREFORE, I, Edmund G. Brown, Governor of the State of California, pursuant to the authority vested in me by the Constitution and Statutes of said State, do hereby grant to Charles Evan Turville, Jr. (San Quentin No. A-44955) a commutation of sentence to life imprisonment without possibility of parole.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this fifth day of November, A.D. Nineteen Hundred and Fifty-nine.

  
Governor of California

ATTEST

  
Secretary of State

BY   
Assistant Secretary of State

For immediate release -- Governor Edmund G. Brown today granted a two-month reprieve in the case of Charles Evan Turville Jr., scheduled to be executed at San Quentin, Friday, September 4.

"I have concluded from my prolonged and careful study of this case that further investigation is advisable in the interest of justice," Governor Brown said.

He said he was granting the reprieve, to November 6, 1959, under authority vested in him by the California Constitution and State statutes.

Turville, 23, was convicted in Los Angeles of the 1957 robbery slaying of Milo Smith, a San Pedro attorney.

Evidence indicated that he and Lamar Mitchell, 17, were invited by Smith to his offices where they robbed him, then assaulted him in an attempt to compel him to open his safe. Smith died as a result of his injuries.

Turville and Mitchell were convicted of first degree murder, and the latter was given a life sentence because of his age. Both convictions were upheld by the California Supreme Court, and the United States Supreme Court has denied further hearings.

\* \* \*

# GOVERNOR'S OFFICE

## INTEROFFICE MEMORANDUM

SACRAMENTO

TO GOVERNOR BROWN

DATE August 29, 1959

FROM Cecil Poole

SUBJECT CHARLES EVAN TURVILLE JR  
Condemned Case

Death Date: Sept. 4, 1959

### HISTORY OF THE CASE

CHARLES EVAN TURVILLE, JR. (Negro, age 23) and LAMAR MITCHELL (Negro, age 17) were charged by Information filed in the Superior Court of Los Angeles on September 23, 1957, with having murdered one Milo Smith, a San Pedro attorney, on the 27th day of August 1957. Both defendants pleaded Not Guilty. There was no issue of sanity (and none is raised now).

Defendants were represented by counsel of their own selection and trial was by jury, lasting over three weeks. The transcript is 2400 pages. Mitchell neither testified nor offered evidence. Turville presented witnesses and himself testified.

On December 27, 1957, the jury found both defendants guilty of first degree murder. Because he was under the age of 18 years the penalty as to Mitchell was automatically fixed at imprisonment for life (Section 190, Penal Code). The same jury on December 30, 1957, after deliberating from 11:50 A.M. to 3:00 P.M., fixed Turville's penalty at death.

On February 18, 1959, the Supreme Court of California affirmed the conviction as to both Turville and Mitchell. Execution for Turville was set for May 29, 1959. On May 5, 1959, a Stay of Execution was granted by Justice Douglas to permit Turville to file a petition for writ of Certiorari. On June 29, 1959, the Petition for Writ of Certiorari was denied and the Stay was terminated. Present death date is Friday, September 4, 1959.

Turville was represented at the trial by Rayfield Lundy. On appeal he was represented by Morris Lavine by appointment of the Supreme Court. Lavine will appear for him at the Executive Clemency Hearing set for 3:00 P.M. Tuesday, September 1, 1959.

THE FACTS

Milo Smith was 55 years old, 5 feet 8½ inches in height, weighed 197 pounds. He had practiced over 30 years and was well known in San Pedro. He had a suite of offices on the second floor of a building on Pacific Avenue consisting of several rooms. He had two secretaries, one of whom was Mrs. Knutson. In one of the rooms, known as "the morgue", Smith kept his wardrobe, ties and 35-40 pairs of shoes.

In Smith's private office was a large upright safe. Smith wore bifocals but could not see the dial to open the safe and had not done so in the 9 years Mrs. Knutson had worked for him. She was in love with him and they had been intimate. (R.T. p. ). She testified he was completely "normal."

Smith carried large sums of money (\$1000-\$2000) on his person in a wallet, and carried smaller sums in a money clip. He wore a diamond ring and a wrist watch with his name engraved on its back.

After closing the office on August 26, 1957, Smith and Mrs. Knutson went to a nearby bar where they had each 3 drinks, following which they parted. Smith drove to the home of a client, Mrs. Helen Seal in Palos Verdes. Later, he and Michael Seal, Mrs. Seal's son, toured several bars in San Pedro until closing hour at 2 A.M. About this hour the two encountered Turville and Lamar Mitchell at 5th and Beacon Streets.

Smith gave Turville \$20 to get a bottle of whiskey. Turville rejoined them having been unsuccessful. Smith told him to keep the bill. Defendants Turville and Mitchell suggested that rather than the four men walking around the streets (inviting police attention) it would be better to drive around in Smith's car while searching for an after-hours bottle. The four then drove to Smith's office in Smith's car.

They parked the automobile in the rear of the building and came upstairs. Smith showed them through the offices. According to Turville, when Mitchell saw the many pairs of shoes he at once began importuning Smith to give him some, and Smith gave him several pair. After one or two unsuccessful calls, Smith called a cabbie who brought a bottle.

Smith, Turville and Mitchell had several drinks. Turville testified that he only had a couple drinks in the office and that

he had not previously been drinking that evening (RT p. 1411). Smith talked about getting some girls but Seal, who had not joined in the drinking, said he was going home. Seal left, driving Smith's car home. When Smith discovered that Seal had taken his car, he telephoned Mrs. Seal and instructed her to leave the car in the Seals' driveway as they were leaving early that same morning on a trip east.

Smith called a cab (ostensibly for the defendants) but none came. About 4:57 he called again. The cab was dispatched but returned without a fare. Turville testified that on one occasion Smith attempted to dial a cab and that he had disconnected the call (suspecting, he said, that Smith was "the police"), and that he had looked up the number and himself called the cab which departed without a fare.

About 5:20 A.M., a person (Not Smith) called a cab which arrived about 5:21. The cabbie saw lights, honked his horn and entered the front of the building. Outside Smith's door he heard drawers being opened and closed but no one responded and he left. As he exited, he stumbled over 2 or 3 pairs of Smith's shoes at the foot of the stairs. He looked up and saw someone apparently watching him. This person was defendant Mitchell (RT p. ).

Smith's body was found by Mrs. Knutson at 7:50 A.M. He lay on his back with a necktie knotted around his throat. His pants and coat were on one side of the floor. His billfold was lying open and empty on the table. There was blood on the floor and a bloody footprint and kneeprint were by the safe. There was broken glass on the floor and a pan of water. His hands were bound behind him.

Smith had died between 4:47 and 6:47 A.M. Cause of death was massive internal hemorrhage from a rupture of the mesentery (the membranous sac in which the intestines are suspended). There were 55 groups of wounds on the body. Nearly all the ribs were fractured, and the tie around the neck had been applied with sufficient force to fracture the hyoid bone. In the doctor's opinion, Smith had been strangled and subjected to painful multiple injuries. His watch and ring, several pairs of shoes, his money, and a .45 automatic kept in a drawer were all gone.

Turville was arrested by agents of the FBI at the home of his aunt in Brooklyn on August 29, 1957. He was wearing Smith's

watch and ring. He at first claimed that Smith had given these to him, but later gave a complete confession following which he told them where to find the bloody clothing he had worn (except the shirt, which he had burned) and the gun he had taken.

The confession is attached as Appendix I. It is suggested the Governor might profitably read it verbatim.

In his statement to the FBI (later reduced to writing and signed by Turville) he told of how he and Mitchell had met Smith and Seal; that they had gone to Smith's office; that Smith had had a bottle of whiskey brought in; that Seal had left; that Smith had flashed his money; that while Smith was in the rest room he and Mitchell agreed to rob him and get money believed to be in the safe; that they had both grabbed Smith, forcing him to the floor; that they ordered him to open the safe, and when he refused they beat and administered judo chops to his sides; that when Smith still refused and tried to crawl away, Mitchell had struck him across the head with a souvenir rifle. They revived him with water, put a gag in his mouth and again demanded the combination. When he refused, they beat him some more. When he appeared dead, they tried to wipe their prints off with a towel, and Turville took the watch and ring.

Later Turville repeated in greater detail this story to officers of the Los Angeles Police Department and a Deputy District Attorney. They made a tape recording of this statement in which he repeated that Mitchell and he had agreed to "roll" Smith; that Smith offered very little resistance; that he (Turville) had removed Smith's pants to keep him from running outside.

The following excerpts from Turville's recorded statement are revealing of the manner in which the deed was done (RT 1179 et seq.):

"Q You both slapped him. What happened then?

"A The guy, like crying, go ahead, go ahead, go ahead. I told him, "'open the safe'. He wouldn't open the safe. The guy was rock stone. He was hard. He wouldn't open it. So we brought him back this way between the table and the desk; and one was on one side and one was on the other side; and we started hitting him about the side here, which you say he died from.

\* \* \* \* \*

"Q You started hitting him. What did you hit him with, fist or hand?

"A Hands.

"Q Judo cuts, you mean?

"A Judo, yeah.

"Q That kind of cuts?

"A Chops.

"Q Both of you going at him?

"A Yeah.

"Q Was he sitting up or laying down?

"A He was sitting up.

"Q All right, what then happened?

"A Then the guy just -- he was stone hard. I mean, he he wouldn't give up either way. And he struggled to get away to -- going toward there; and Lamar grabbed an antique gun in the corner of the room over there and hit him with the butt on top of the head.

"Q On top of the head or across the front?

"A No, he hit him on top the first time, and the next time when he hit him, it broke right across the top of his -- the front -- the crown of his head.

"Q Oh, he hit him twice with the rifle?

A He hit him three times.

"Q Three times?

"A Three or four times.

"Q What else did he hit him with or you hit him with?

"A I hit him about the knees with that gavel.

"Q Who hit him with the telephone? /Found broken in its cradle./

"A The telephone he tried to swing at us.



"Q Anybody hit him with a bottle?

"A I don't know. I don't believe so. I didn't hit him with it.

"Q Who tied his hands?

"A I think Lamar tied his hands.

"Q When did that happen?

"A Well, sir, after the first time he tried to get away, and Lamar grabbed the gun -- I don't know -- stunned him, I guess. Anyway, he was cold. And we took his pants off. I mean, thought maybe the guy had some vanity; he wouldn't run. So we took his pants off, and we tied his hands.

\* \* \* \* \*

"Q What did you tie his hands with?

"A I don't know. Lamar brought two ties, and I put a handkerchief in his mouth and a necktie.

"Q So you put a gag in --

"A Yeah.

"Q Was he laying down at this time?

"A No, he was sitting up.

"Q Still sitting up?

"A Yeah. He was across my knee actually was where he was.

"Q Even after he got hit with the rifle?

"A Well, I went and got a rag and brought him to. Cold rag.

"Q Oh, you brought him to. In other words, he had been out once, and then you brought him to?

"A Yes.

"Q How did you bring him to?

"A With a cool rag.

"Q All right.

"A So I told him, pleaded with him, 'Write the combination on there.' I told him -- actually, I didn't have no desire to hurt the man. All I wanted, I wanted the money.

"Well, so the man wouldn't write it. I started slapping him again and then I got the gavel and I started hitting him over on the knee. He still wouldn't do it.

"Q What were you doing that for, to hurt him?

"A No, just to make him to write the combination.

"Q Well, I mean, did you think if you hurt him enough he would write it?

"A Yeah. Just it was a general thought. I don't know, crazy. Actually a man in his right senses, I don't think -- if a man shows that he don't want to do it, he is not going to do it. I mean, he'll end up like we did."

Defendant Mitchell was arrested on the night of August 29th. At first he denied having participated in the robbery-murder and claimed he didn't know Turville's real name. He was shown a newspaper story indicating that Turville had confessed and had implicated him. He then narrated a version which imputed to Turville all the violence and robbing.

#### TURVILLE'S DEFENSE AT TRIAL

As indicated above, Mitchell did not testify.

Turville sought to avoid the damaging force of his confessions by testifying that the FBI had beaten the confession out of him and had "put the words into his mouth." He did not claim that the Los Angeles officers had used force.

ON the witness stand, he denied any robbery, claimed that Smith had given him the watch and ring and money to induce him and Mitchell to commit unnatural acts as follows:

(RT 1318): "Lamar told me that /Smith/ said he wanted Lamar to fuck the boy /Seal/ in the ass while he sucked my penis."

He stated that Smith had given him a "bunch of bills for what you and your partner are going to do -- " (RT 1336).

Turville further testified that after Smith offered him the money he refused to go through with it, and that Smith then assaulted him in an effort to compel him. He said that Smith was a powerful man, and the struggle was long and violent. He stated, however, that Smith was hale and hearty at its conclusion, and that he left him thusly. By contrast with this version, Turville told the F.B.I. in New York that Milo Smith was not a "queer". (RT 1102)

The defense clearly took the position that any injuries inflicted upon Smith by Turville were done in self defense, but flatly denied that Turville was responsible for the death. By cross examination and other testimony the defense sought to throw suspicion on either Mike Seal, Mrs. Knudsen, the Secretary, or to attribute the death to unknown persons.

#### LEGAL QUESTIONS:

On appeal, the only important contentions were:

1. That the evidence did not support the verdict of first degree murder.
2. That the court should have instructed on lesser degrees of homicide, and should have given instructions on intoxication.
3. That Turville's confession was involuntary.
4. That the 1957 criminal procedural change in Section 190.1 of the Penal Code was unconstitutional as applied to Turville.
5. That the District Attorney was guilty of misconduct.

The court disposed of all of these objections in order. It found the evidence was ample to support the verdict, and that since Turville denied causing the death and claimed that any blows struck were in self defense, he was either not guilty, or, if guilty at all, the crime was a felony rendered in the perpetration of robbery and torture.

Morris Lavine indicates by telephone that he regards the court's failure to give instructions on intoxication as very serious error. As indicated, the record disclosed no great degrees of intoxication by either Turville or Mitchell. The Toxicology Report on Milo Smith disclosed a blood alcohol of .16, or moderate intoxication. (RT 755). Turville did not testify that he was intoxicated, and, in fact, stated that he had only two drinks in the office and had not been drinking previously that night. (RT 1411).

The Supreme Court concluded there was no evidence warranting instructing on intoxication under Section 22 of the Penal Code.

Turville also contended on appeal, and Lavine asserts presently, that it was unfair, if not illegal, to sentence Turville to death while Mitchell got off with life imprisonment because of age.

The court found the classification to be reasonable and rejected the contention. A review of the record indicates clearly that had it had the power, the jury undoubtedly would also have sentenced Mitchell to death.

#### BACKGROUND DATA:

##### Sociological and other factors:

Turville is 23, and prior to this offense had been in no serious trouble. He was born July 24, 1935, in Brooklyn, in what the prison sociologist called a respectable lower middle-class Catholic family. He has been accident-prone throughout his life, having had several serious falls in early childhood and several motorcycle accidents in early youth. In school he was a fair student, with common behavioral problems.

When he was very small his family moved to Pittsfield, Massachusetts, and in 1952 he joined the Navy, working in a Seabee unit for four years. He was honorably discharged, although his record reveals two minor court martial convictions for insolence to a superior and petty theft. He is unmarried. He worked a short while in Todd Shipyards but was laid off, and was unemployed at the time of this offense.

##### Psychological Evaluation:

His intelligence is average, with verbal ability in the bright-normal range. He has a tendency to be egocentric, but has good ability to think abstractly and concretely.

#### NEUROPSYCHIATRIC FACTORS:

The Neuropsychiatric Examining Committee finds no evidence of abnormalities, and diagnoses him as: "Emotionally unstable personality, with passive-aggressive and psychoneurotic features, and with some psychosexual immaturity." They conclude that although emotionally upset, he is not insane.

#### RECOMMENDATIONS OF INTERESTED PERSONS:

##### Trial Judge:

Judge Ralph K. Pierson died following the trial, and no recommendation has been received.

##### District Attorney:

The District Attorney recommends against leniency, setting forth:

1. That proof of guilt is overwhelming.
2. That this was a crime committed in the course of a robbery.

3. That the crime was particularly brutal. Quoting the language of the autopsy surgeon: "I have never seen such massive and extensive injuries on a single individual short of someone who had been involved in a violent automobile accident".

4. That there was no evidence of derangement by either mental defect or intoxication.

The District Attorney asserts that the imputation of homosexual conduct to the deceased was recent fabrication.

As set forth above, Turville's trial testimony to this effect is in contrast with his earlier statements to F.B.I. and police. There is, however, considerable question as to just why Smith invited the men to his office.

#### DEFENSE:

The defense contentions have been set forth in the body of this memorandum and may be repeated as:

1. That the trial was unfair in that the trial judge was stern and the District Attorney committed misconduct.

2. All the facts did not come out, particularly referring to the alleged homosexual overtones of this case.

3. That Turville was a good boy, in no prior serious trouble, and it is unfair to take his life while sparing that of Mitchell.

4. That the jury was not told that Mitchell could not receive the death penalty, and did not have this added factor before it when it deliberated on Turville's guilt.

5. That no instructions were given on intoxication.

#### MISCELLANEOUS

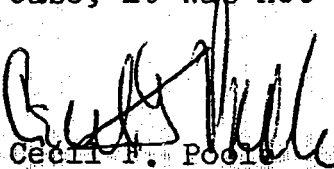
Under the heading "Miscellaneous" in this file, there are a number of communications from friends of Turville's mother. She is employed in Southern California by James Pagett, who is a friend of John Clark (Northrup Aircraft). They came to see me on May 13, of this year, and Pagett may attend the hearing. They all state that Mrs. Turville is a fine woman, and they urge clemency for her rather than for her son. Discussion with them indicates that neither Pagett nor Clark knew much of the facts.

Marcel Frym interested himself in the case at Clark's request, and sought permission to conduct a psychiatric interpretation of Turville and Caryl Chessman in the prison. This was denied by Dick McGee. Frym states in a letter that he has received information that Smith was a "well known practicing homosexual", and suggests that this added factor might be of importance to your consideration.

There is also a copy of a letter written by the Reverend Timothy J. Champoux, of St. Vincent dePaul Rectory, Lennoxdale, Massachusetts, to Bishop Timothy Manning in Los Angeles, asking his intercession with you. There is no communication in the file from Bishop Manning to the Governor.

CONCLUSIONS:

The killing in this case was one of the most vicious we have seen. At least one of the motivations was robbery. There may have been other factors. I have read the entire transcript, and feel that Turville's defense and his attempt to cast suspicion on other persons, his obvious fabrication of F.B.I. mistreatment, and his general untruthful narration and demeanor probably reacted sharply against him. I find no substantial error, although the Trial Judge appears to have become quite impatient with Turville and his counsel for what were manifestly dishonest presentations. It was clear that the defense, at some point, determined that its best course was to lay a foundation for U.S. Supreme Court Review on the grounds that the confession was wrongfully obtained, and that its admission tainted the entire proceedings. The defense job would have been difficult under the best of circumstances, and, in this case, it was not very well conducted.

  
Cecil F. Poole  
Secretary

CFP:b

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 75: Materials Relating to the Clemency of  
Lawrence Glenn Corwin (February 4, 1960)**

## Executive Department

State of California

### COMMUTATION LAWRENCE GLENN CORWIN

Lawrence Glenn Corwin, San Quentin No. A-49578, was convicted on October 28, 1958, of first degree murder in the Superior Court of Los Angeles County. He was originally scheduled to be executed October 30, 1959. Pursuant to my usual policies I have given careful examination to the entire record of his conviction, including the transcript of trial testimony, the investigation reports submitted by the Department of Justice and the Adult Authority, and the opinion of the California Supreme Court on automatic appeal. On October 26, 1959, I conducted a personal executive clemency hearing.

The record in this case and the evidence presented to me at the executive clemency hearing conclusively demonstrated that this 24 year old man at all times has suffered from a severe and substantial mental defect impairing, and in most areas of his functioning, effectively destroying his capability of judgment and comprehension. At his trial psychiatrists appointed to examine into his sanity concluded that though he was technically legally sane, he was mentally defective with an intelligence level barely beyond that of idiocy. On October 28, 1959, I granted a reprieve in order to make further inquiry into the mental condition of the condemned man.

During the period of reprieve I have caused additional psychiatric examinations to be conducted and have received further reports and evaluation of Corwin's mental state. Outstanding psychiatrists, both in and out of prisons, have advised me that his mental age is not higher than that of a 10 year old child; that his defect of mind is basic and deep and has permeated and influenced his conduct including his commission of the homicide in this case. I am advised by one such expert:

"Near-psychotic personality disorder and the mental deficiency make it unlikely that at any time, including during the events which led up to his conviction, he has been able to function above the level of a 10 year old child. To execute him would be, to my way of thinking, like sending a 10 year old child to the gas chamber."

The neuropsychiatric examining committee at San Quentin prison has made special examinations of Corwin at my request. In their latest report on February 1, 1960, they state:



## Executive Department

State of California

PAGE TWO

"His limited defective judgment and his emotionally crippled personality makes him act inappropriately like a cornered, weak little animal which strikes out blindly at or bites anyone near by."

The neuropsychiatric examining committee analyzes his condition as that of "an Inadequate, Borderline Mental Deficiency, Emotionally Unstable, Hysteroid, Passive-Dependent Personality with Schizoid Features, Many Feelings of Insecurity and Inferiority, with Limited Inhibitions and Responsibility."

In view therefore of the undisputed psychiatric evidence of this defendant's defective and impaired mind, and the equally clear showing of its causative influence in the commission of what was otherwise a completely senseless act of violence upon a victim with whom he had been on friendliest of terms, I am of opinion that the State of California should attempt to apply permanent custody and intensive psychotherapeutic treatment rather than proceeding with execution. I therefore have determined for the above reasons this is a case in which executive clemency should be exercised in the limited form of commutation of sentence from death to imprisonment for life without possibility of parole.

On February 3, 1960, I submitted this case to the Supreme Court of California for its recommendation pursuant to Article VII Section 1 of the Constitution. On that same date Chief Justice Phil S. Gibson wrote to me as follows:

"The application for executive clemency submitted by Lawrence Glenn Corwin (San Quentin No. A-49578) has been considered by the members of the Supreme Court, and a majority of the Justices recommends commutation of death sentence to life imprisonment without possibility of parole."

NOW, THEREFORE, In view of the foregoing considerations and the favorable recommendation of the Justices of the Supreme Court of California, I, Edmund G. Brown, Governor of the State of California, pursuant to the authority vested in me by the Constitution and statutes of California,


Executive Department

State of California


PAGE THREE

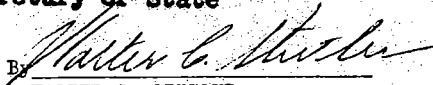
do hereby grant to Lawrence Glenn Corwin, San Quentin No. A-49578, a commutation of sentence from death to life imprisonment without possibility of parole.

IN WITNESS WHEREOF I have here-  
unto set my hand and caused  
the Great Seal of the State  
of California to be affixed  
this fourth day of February,  
A.D. Nineteen Hundred and  
Sixty.

  
Governor of California

ATTEST

  
Secretary of State

By   
WALTER C. STUTLER  
Assistant Secretary of State

*Corwin*

Governor Edmund G. Brown  
February 4, 1960

For immediate release Governor Edmund G. Brown today commuted  
the sentence of Laurence Glenn Corwin from death to life imprisonment without  
possibility of parole.

Corwin, 44, of Compton, was scheduled to be executed at San Quentin  
prison today.

He was convicted in the Los Angeles County Superior Court  
in 1947, of the murder of Mrs. Martha Gibbs, an 80-year-old  
woman whom he had known for several years.

Corwin had been convicted of more than one felony, Governor  
Brown said. He submitted the case to the Supreme Court in accordance with the  
California Constitution.

On February 3, 1960, the Governor received a letter from Chief Justice  
Earl Warren saying that the majority of the members of the Supreme Court  
recommended commutation to life imprisonment without possibility of parole.

Corwin originally was scheduled to be executed October 30, 1959,  
but in October 18, 1959, Governor Brown granted a reprieve to make further  
study of the condemned man's mental condition.

"The record in this case and the evidence presented to me at  
a clemency hearing conclusively demonstrated that this  
condemned man at all times has suffered from a severe and substantial mental  
defect, and in most areas of his functioning effectively destroying,  
if not totally obliterating, his ability of judgment and comprehension," Governor Brown said.

He also said that psychiatrists at Corwin's trial concluded  
that he was technically sane, he was "mentally defective with an  
intelligence level barely beyond that of idiosyncrasy."

Governor Brown said that during the period of reprieve he had other  
psychiatric examinations conducted and he was advised that Corwin's mental  
condition was higher than that of a 10-year-old.

Governor Brown said he was informed that Corwin's "defect of mind is  
deep and has permeated and influenced his conduct, including his  
conduct in the homicide in this case."

with me was advised by CDR expert.

He was in particularly discomforted the mental deficiency  
which was at the time, including during the evenings which led up  
to the time he was able to rise above the level of a  
man. He would be, in my way of thinking, like  
the gas chamber.

He was assigned to the Education Committee at  
the time of the trial.

He was a very intelligent and capable  
man. He was a very capable man. He was a very capable man.  
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## Executive Department

State of California

REPRIEVE  
LAWRENCE GLENN CORWIN

Lawrence Glenn Corwin, San Quentin Prison No. A-49578, was convicted in the Superior Court of the State of California in and for the County of Los Angeles of the crime of Murder, first degree, on October 28, 1958, and is scheduled to be executed at San Quentin Prison on Friday, October 30, 1959.

A grave doubt has arisen concerning the mental condition of the condemned man. Therefore, in considering the evidence laid before me, including psychiatric testimony adduced at his trial and that which I have received additionally, I have given special attention to expert opinion regarding his mentality. The record shows this man possesses a low grade of intelligence barely above that of idiocy. The psychiatrists who have examined him state that his mental age is no higher than that of a ten year old child. They also inform me that this mental condition influenced and permeated the homicide in this case.

There is therefore presented a very serious question whether in such a case the State of California should proceed with execution rather than attempting to apply treatment and custody. And I am firmly convinced that additional medical and psychiatric examination and reports would be of great assistance to me in resolving this question. I therefore feel that further investigation is necessary which can only be done by granting a reprieve for this purpose.

NOW, THEREFORE, I, Edmund G. Brown, Governor of the State of California pursuant to the authority vested in me by the Constitution and statutes of that State, do hereby grant a reprieve to Lawrence Glenn Corwin, San Quentin Prison No. A-49578, to and including the 18th day of December, 1959.

IN WITNESS WHEREOF, I  
have hereunto set my hand and  
caused the Great Seal of the State  
of California to be affixed this  
23th day of October, A.D. Nineteen  
Hundred and fifty-nine.

  
Governor of California

ATTEST

  
Secretary of State

  
CHAS. J. J. J. J.  
ASSISTANT SECRETARY OF STATE

Printed in CALIFORNIA STATE PRINTING OFFICE

PRESS RELEASE - Reprieve  
Governor Edmund G. Brown  
October 28, 1959

For immediate release -- Governor Edmund G. Brown today announced he has granted a reprieve until December 18 to Lawrence Glenn Corwin, who had been scheduled for execution at San Quentin Prison Friday, October 30.

He said "grave doubt has arisen about the mental condition" of Corwin, convicted of first degree murder in Los Angeles last year.

The Governor's official notice of reprieve declared that "the record shows this man possesses a low grade of intelligence barely above that of idiocy" and that "the psychiatrists who have examined him find that his mental age is no higher than that of a 10-year-old child."

The Governor said the examining psychiatrists informed him that this mental condition influenced the homicide in the case.

"There is therefore presented a very serious question whether in such a case the State of California should proceed with execution rather than attempting to apply treatment and custody," the Governor said. "I am firmly convinced that additional medical and psychiatric examination and reports would be of great assistance to me in resolving this question."

\* \* \*

# GOVERNOR'S OFFICE

## INTEROFFICE MEMORANDUM

### SACRAMENTO

TO Governor Brown

DATE October 23, 1959

FROM Cecil Poole

SUBJECT CORWIN, Lawrence G.  
Condemned case

Death date: October 30, 1959

#### HISTORY OF THE CASE

Lawrence Glenn Corwin was convicted on October 28, 1958, of First Degree Murder. A plea formerly entered of not guilty by reason of insanity was withdrawn. On October 29, 1958, after a hearing on the issue of penalty same jury fixed the penalty at death. He was represented by a deputy public defender of Los Angeles County, Richard W. Erskine, who will appear for him at the executive clemency hearing.

The conviction was unanimously affirmed by the Supreme Court on June 24, 1959, in an opinion written by Justice Spence.

Executive clemency hearing is scheduled for Monday, October 26 at 2:30 p.m. Execution is scheduled for Friday, October 30, 1959.

#### THE FACTS

Corwin was charged <sup>with</sup> murdering Mrs. Martha Gibbs, an 80 year old Compton woman, during the perpetration of rape and burglary of her apartment, which occurred June 2, 1958.

About 9:20 p.m. Monday, June 2nd, Mrs. Gibbs returned from a trip she had made with her grand-daughter, Mrs. Sandra Jean Gibbs Bowen. She got out of Mrs. Bowen's car a few doors from her house, entered and then, by flashing a porch light on and off indicated that she was safely inside. Her body was found the following evening by her son, Harry Gibbs Jr., who had been trying to get her by telephone. The body lay on the bed with the feet protruding from a blanket. Her chest and face were covered by a pillow which was saturated with blood. There were numerous stab wounds in the chest area. A window which was customarily nailed so that it opened only about four inches to permit the deceased's cat to enter and leave had been pried open and the nails pulled out.

Three days later on June 5, 1958, at 1:20 a.m. Corwin was stopped by Compton Police. There were two elderly women in his car. He said to them "I know you want me. I killer her. I was going to turn myself in in the morning. Don't tell the other ladies in the car." He told the officers he had had a fight with his girl friend, was mad and had to take it out on someone; that he knew Mrs. Gibbs and knew that she left the

October 23, 1959

window open; that he had entered and obtained a meat fork with which he stabbed her. He was most reluctant to admit the rape and said he did not know whether he had done it but that if the officers said he had, then he probably had.

In a tape recorded statement he repeated the above and added that he had taken from the apartment a jewelry box and a fur piece which hung in the closet and that he had thrown these articles away. He reenacted the crime for the police. He thereafter made another statement which was transcribed and a typewritten copy was signed and corrected by him. He directed the officers to the approximate area where he had thrown the articles. The jewelry box was recovered.

Medical examination of Mrs. Gibbs showed evidence of rape. Examination of the clothing worn by Corwin disclosed human blood of type O. Corwin's type blood is A. His trousers contained evidence of spermatozoa and seminal fluid.

The cause of death was multiple stab wounds of the chest (34) and massive internal hemorrhage.

Corwin did not testify and presented no evidence at his trial on the issue of guilt. The court had had him examined by three psychiatrists, Dr. Marcus Crahan, Dr. Clarence W. Olsen and Dr. Robert E. Wyers. Only Dr. Crahan testified on the penalty trial. His testimony showed the defendant had an I.Q. of 71 (moronic), that he was "dull normalcy bordering on a mental defect." (RT 448) He had a mental age of about 10. (RT 448)

Mrs. Fred Williams, Corwin's mother, testified that he had convulsions when he was a baby, (RT 451); that he went to the 8th grade; that she had divorced Corwin's father when he was about ten and that for four years Corwin had lived with the father.

The prosecution, at the same penalty hearing, introduced the testimony of Deputy Sheriff Maurice Davis who told the jury that on one of the occasions when he was escorting Corwin from the court room he had asked him why he killed Mrs. Gibbs; that Corwin had said he did not know why but that if he had had to do it over again he would do the same; that he would also like to kill a couple of detectives and his brother-in-law; that these people were merely no good. (RT 460)



LEGAL QUESTIONS PRESENTED

The only legal questions raised concerned the propriety of permitting the jury to have the testimony of Deputy Sheriff Davis as to Corwin's extrajudicial statements. The Supreme Court opinion held that this was legitimate consideration for the jury in its determination of the appropriate penalty.

The other question, a purely technical and procedural one, related to the propriety of permitting the prosecution to open and close the argument on the issue of penalty. The court found no error in this.

BACKGROUND DATASociological Factors:

Corwin is now 24, having been born April 19, 1935 at Irondale, Minnesota. He was the third of five children. His parents, divorced, are both living in Compton. He is of German-French and Irish extraction.

The father, a welder, was irresponsible and alcoholic. He was thin, weak and sickly and developed a violent temper. When he was 17 he once attempted suicide, in a fit of anger at his father.

He quit the 8th grade at the age of sixteen and never returned to school. In 1955 he enlisted in the Air Force but was discharged after four months because of general inaptitude. He had no skills but did work for the Southern Heaters Company in Compton about six years as an assembler.

From early age he admits excessive drinking. He has experimented with marijuana, yellow jacket and Christmas trees, all poisonous drugs. In the latter period before the present offense he had combined benzedrine in various forms with alcohol. He claims to have suffered blackouts on numerous occasions.

For five years he had a girl friend and when this terminated he married a Sylvia Rose in Tijuana, Mexico. He states he did this because he thought she was pregnant by him. However, the next day he married Sandra, a slight child weighing 297 pounds. Sylvia went to Massachusetts where she gave birth to a child. He and Sandra separated and she has instituted divorce proceedings. Around May 1958 he claims to have married a wet back in Juarez and to have lived with her for about 3 weeks but states he cannot recall

He denies any history of sexual deviation or homosexuality. In fact he claims that his first relationship with Sandra was a rape.

Prior Criminal History:

He has had arrests for drunkenness and car theft, on the latter of which he was in 1954 convicted. This is a felony conviction.

Neuropsychiatric factors:

As indicated above Dr. Crahan testified that Corwin has a mental defect but no mental disease. The reports of the Doctors appointed by the trial court were as follows:

Dr. Crahan's report appears in the Clerk's Transcript pages 7 to 15. He concludes:

"This defendant's recollection of most events that transpired before, during, and after the killing is sufficiently adequate to indicate that he was completely conscious during those events; that he knew the difference between right and wrong as well as the nature and consequences of his acts. He fully understands the proceedings against him and is capable of assisting counsel in his own defense. It is the examiner's opinion that this defendant was at the time of the alleged acts and alleged perpetration, as well as at the time of the examination, legally sane."

Dr. Olsen's report appears on pages 16 to 19 of the Clerk's Transcript. He notes that Corwin "appears dull, morose, with asymmetrical head and many tattoo marks, some professional some amateur done by himself." That as to memory Corwin did not know the name of the judge or public defender. That as to intelligence his present level is about 75 to 80% bordering on moronic. He noted that Corwin had a deformed left elbow and left knee; that the right face was weak compared with the left; that there was evidence of self inflicted wounds on the left forearm and that Corwin indicated he had often felt like driving a car off the road. He concluded with that the subject was sane at the time of the offense and at the time of examination. His conclusion is:

"A man aged 23 with low intellectual level and scant morality committed murder and rape under the influence of alcohol and possibly benzedrine.

October 23, 1959

At the examination he is dull, morose and vaguely regretful. There is a history of criminality and sexual promiscuity. There is no indication of insanity."

Dr. Wyers' report appears on pages 20 to 27 of the Clerk's Transcript. As in the case history elicited by the other Doctors, Corwin claims much drunkenness and a generalized amnesia, for many of the events. He was unable to answer questions such as how much is 7 times 9, how to spell Los Angeles or San Diego, what ocean was East or West of the United States (the only ocean he knew of was the Pacific) or what country is North of the United States.

His opinion was:

"That this defendant is rather dull intellectually and I would classify him as a dull normal. He shows sociopathic tendencies and apparently has an alcoholic problem, to a degree at least. He has also been using some marijuana and benzedrine and was, at the time of the alleged offense. I consider him a sociopath and I found no evidence of a psychosis. I consider that he was legally sane at the time of the alleged offense, and legally sane at the present time."

#### RECOMMENDATIONS

The trial judge, A. A. Scott, and the district attorney as well as the chief of police of Compton all recommend against executive clemency. The defendant has claimed that another man, Billy Cox, was present at the time the crime was committed. On August 1, 1959, Corwin was interviewed by S. L. McClary, special agent for the Department of Justice at the prison in San Quentin. In this interview he told McClary that he had met Cox who had suggested that they steal something; that they agreed to steal a television set and Corwin suggested Mrs. Gibbs' apartment; that they entered and then Corwin took the jewelry box while Cox took the fur piece. That it was then that he had a sexual intercourse with Mrs. Gibbs.

Mrs. Betty Costanza, Corwin's sister, claims that shortly after he was arrested she had a long conversation with him in the course of which he claimed that after he and Cox had entered the apartment they heard a noise indicating that Mrs. Gibbs was home; that Cox tried to quiet her and it was then that she was stabbed by Cox; that he had raped her after Cox had stabbed her and this was how he got the blood on him.

October 23, 1959


Detective Parker of the Compton Police Department claims that they checked out Cox's alibi for the night in question and that he was cleared. McClary, the special agent, reports on page 11 (Investigation) that Parker was very vague and that he has some doubt of the thoroughness of Parker's investigation.

Cox has a long record of rape, theft and burglary. He could very well have perpetrated the offenses which Corwin now alleges.

Legally Corwin is as responsible for the murder whether the version accepted is that presented at the trial or the latest version involving Cox. It does appear that some doubt has been raised as the exact circumstances under which the killing was accomplished. And in either event, the trial jury would probably have voted for gas.

#### GENERAL CONCLUSIONS

Subject to developments at Monday's executive clemency hearing the Governor might consider whether a reprieve should be granted for the purpose of exploring some of the above doubts and also to go into the psychiatric features more thoroughly.

  
Cecil F. Poole  
Secretary

CFP:jm

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 76: Materials Relating to the Clemency of Robert L. Mason  
(August 19, 1960)**

## Executive Department

State of California

COMMUTATION  
ROBERT L. MASON

I have carefully considered the case of Robert L. Mason, San Quentin No. A-53910, who was convicted in 1959, in Los Angeles County of the crime of murder, first degree, and who is scheduled to be executed at San Quentin on August 24, 1960. On February 17, 1959, Mason fatally injured Mrs. Suzan Jamerson and seriously injured her daughter, Mrs. Rona Porrazzo.

The record of this case is most unusual.

Mason, after years of close friendship with and kindnesses toward the Porrazzo family, became infatuated with Mrs. Porrazzo. To what extent, if any, this passion was requited remains a matter of dispute. Eventually she accused him of assaulting her, a charge which he has always most vehemently denied. The accusation was dismissed when a jury was unable to agree, but the fact that it had been made continued to disturb and warp his thinking, and he tried without let to compel her by one means or another to admit its falsity. Eventually, with paranoid intensity, everything else in life became subordinated to his overpowering need to be acquitted of the stigma of this charge by her own admission.

Eventually too, in fear of him, Rona began carrying a gun. And learning of this, Mason also acquired a pistol.

On the fatal occasion, Mason concealed himself in Rona Porrazzo's home where he waited for her to return. Assertedly he was finally determined to wrest a confession from her lips. When Rona Porrazzo, accompanied by Mrs. Jamerson, entered, she discovered his presence. A wild and confused scene ensued during which both Rona and Mason fired shots. In this melee Mrs. Jamerson--concededly without prior design or intent--was fatally shot. Rona was severely wounded.

There is of course neither legal provocation nor justification for this violent attack. I am convinced that the trial was fair, the guilty verdict is supported by the evidence, and the defendant was adequately represented by competent counsel.

But after careful study I am convinced that there are mitigating factors in this case which deserve consideration.

Examinations conducted at San Quentin reveal that Mason suffers from permanent and wide-spread brain damage which has produced steady brain deterioration. Expert neuro-psychiatric opinion is that this has resulted in a partial

## Executive Department

State of California

PAGE TWO

dissociation which is in part physical, leading to black-outs, and in part functional, productive of the kind of aggressive conduct involved here. This condition has been found directly related to the hyper-hysterical-paranoid impulsiveness which drove Mason abnormally to seek vindication. And electroencephalogram studies have confirmed that this condition is in fact based upon real and worsening deterioration of the brain tissue. And this condition, I am told, is amenable to treatment.

It also is quite clear that only in the restricted area of his tragic relationship to Rona Porrazzo was there any indication of anti-social propensities in his nature, and in no other respect has Mason exhibited any violent or dangerous tendencies.

I am impressed by his lack of any prior serious trouble, his long-time good record as a steelworker with high recommendations, and the evidence of an otherwise generous and compassionate regard for his fellow man. I am also mindful that the District Attorney of Los Angeles County offered, before trial, to accept a plea from Mason which would have spared his life and imposed a penalty of life imprisonment with the ultimate possibility of parole.

Under all the circumstances, considering the nature of this sad occurrence and the emotional factors above set forth which produced it, I find this to be an appropriate case for executive clemency in the limited respect only that the sentence of death should be commuted to imprisonment for life without possibility of parole.

NOW, THEREFORE, in view of the foregoing considerations, I, Edmund G. Brown, Governor of the State of California, pursuant to the authority vested in me by the Constitution and statutes of the State of California, do hereby grant to Robert L. Mason, San Quentin No. A-53910, a commutation of sentence from death to imprisonment for life without possibility of parole.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this *Nineteenth* of August, A.D. Nineteen Hundred and Sixty.

Governor of California

EST

Secretary of State

WALTER C. STUTLER

Assistant Secretary of State

For immediate release -- Governor Edmund G. Brown today announced that he has commuted the death sentence of Robert L. Mason, who was scheduled to die at San Quentin next Wednesday, to life in prison without possibility of parole.

Mason was convicted of first degree murder in Los Angeles in 1959, after a shooting melee in which he fatally injured Mrs. Suzan Jamerson and seriously injured her daughter, Mrs. Rona Porrazzo.

The Governor, terming the record of the case "most unusual," said he felt there were several mitigating factors involved.

Among the factors mentioned were reports from examinations at San Quentin that Mason suffers from permanent and widespread brain damage which has produced steady brain deterioration. This condition, the Governor was informed, is directly related to "the hyper-hysterical-paranoid impulsiveness" involved in the crime.

The Governor also noted Mason's relationship to Mrs. Porrazzo, observing that the character of the relationship "remains a matter of dispute," but that only in the restricted area of that relationship "was there any indication of anti-social propensities."

"I am impressed by his long-time good record as a steelworker with high recommendations, and the evidence of an otherwise generous and compassionate regard for his fellow man," the Governor said.

"I am also mindful that the District Attorney of Los Angeles County offered, before trial, to accept a plea from Mason which would have spared his life and imposed a penalty of life imprisonment with the ultimate possibility of parole," the Governor said.

The shootings took place when Mason, carrying a gun, concealed himself in the Porrazzo home, assertedly to force Mrs. Porrazzo to admit she had in the past falsely filed accusations of assault against him.

She too had been carrying a gun. When she entered, accompanied by her mother, shots were exchanged, and Mrs. Jamerson received fatal wounds, concededly without prior design or intent," Brown observed.

The Governor also noted, however, that there was "neither legal revocation nor justification for this violent attack," adding that "the trial is fair, the guilty verdict is supported by the evidence, and the defendant is adequately represented by competent counsel."

\* \* \*

*Edmund G. Brown*



# GOVERNOR'S OFFICE

## INTEROFFICE MEMORANDUM

### SACRAMENTO

TO Governor Brown

DATE August 16, 1960

FROM Cecil Poole

SUBJECT Robert L. Mason  
Execution date: August 24, 1960

#### HISTORY OF THE CASE

Robert L. Mason, 48, was charged in Los Angeles County with the murder of Suzan Jamerson and with the felonious shooting of Rona L. Porrazzo. Both the offenses took place on February 17, 1959. He pleaded not guilty and not guilty by reason of insanity. Two doctors were appointed by the Superior Court to examine Mason and both reported that he was presently sane and had been sane at the time of the commission of the offenses. Trial was set for May 20, 1959, at which time Mason withdrew the plea of not guilty by reason of insanity, and a jury was selected for the not guilty trial. On June 3, 1959, the jury returned a verdict of guilty of first degree murder and of the assault charged. On June 4, 1959, the jury fixed the penalty at death.

Mason was represented at the trial by Norman Sugarman, and on the automatic appeal was represented by Carl B. Shapiro. On May 16, 1960, the judgment of death was affirmed by the California Supreme Court in an opinion written by Justice Trainor and concurred in unanimously by the other Justices.

An executive clemency hearing is scheduled Wednesday, August 17, 1960, at 2:30 p.m., in the Governor's Office in Los Angeles. Execution date is Wednesday, August 24, 1960, at 10:00 a.m.

#### THE FACTS

Rona Porrazzo and her husband, David, with their young son, lived in Hollywood in 1952. David Porrazzo was a musician, playing engagements at various Los Angeles night clubs. David met Robert L. Mason who became a friendly visitor at the Porrazzo home. The relationship was friendly and normal until 1957.

One Sunday during the summer of 1957, Rona returned home from church to find Mason in the house. He had stayed there the previous night but had not been expected to return that afternoon. An argument arose over his statement to Rona that her mother, Suzan Jamerson, had borrowed \$20.00 from him. Rona attempted to telephone her mother, but Mason grabbed and twisted her arm and took the phone away from her by force. She complained of this incident to David and he asked Mason not to come to the house when the husband was not present.

On February 27, 1958, Rona and her son, Page, returned from night services at church. She put him to bed and then went to retrieve her automobile. When she returned she discovered Mason at

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the door. He entered with her and she made coffee. They talked while she worked on family records. At 12:50 a.m. she told him to leave, whereupon he attempted to embrace her. She resisted and he threw her onto a couch and began to choke her. He placed a necktie around her neck and twisted it. He accused her of being "unfriendly" to everyone else but to him. He told her that if she would swear not to call the police and to be nice to him he would let her go. As a result of this incident she had burns and bruises and suffered damage to her voice box. She also sustained a fractured rib. She filed a criminal complaint against him, but the jury disagreed and the action was dismissed. Mason at all times denied that he was even present at this incident, and in fact he became obsessed with the need for obtaining "vindication" from this accusation.

Early in the morning following Thanksgiving Day in 1958, Rona left the restaurant where she was employed to go to her car. In the parking lot Mason tackled her, knocked her, punched her and forced her to enter his car. He asked her why she changed attorney, struck her, twisted her ears, hit her on the leg and on the jaw, grabbed her hair and hit her head on the window post of the car. He told her that if she "put the finger" on him this time, he would kill her and her husband. Again she received medical treatment for her bruises. After this her husband bought her a gun and they made arrangements for her not to have to drive home from work alone.

Out of fear that Mason would make good on his threat, Rona did not tell David how she received her injuries. David, however, accused Mason of knowing who beat his wife and Mason denied it. Mason told David that shortly before the Thanksgiving incident that he had been intimate with Rona. He also said that he had no use for Suzan Jamerson.

In January, 1959, David was in Las Vegas and Rona and the boy stayed at their Glendale home with David's parents, who were visiting from Boston. Early one morning Mason slipped into the rear of the house and grabbed Rona, hit her with a screwdriver. Her screams brought her parents running and after a fight Mason fled.

On February 17, 1959, the Porrazzos were living in the rear dwelling of a duplex, the front house of which was occupied by Suzan Jamerson. David was in Las Vegas and Rona, who no longer ever stayed in the house alone, was staying in Mrs. Jamerson's house. On this occasion she asked her mother and 5 year old boy to accompany her to the rear house while she got a sweater. Without her knowledge Mason had slipped into this house the day before and had been waiting for some 20 hours. Rona saw a coat sleeve extending behind a door and screamed. She turned and ran but slipped on a rug. Mason sprang from the closet with a gun

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in his hand and began shooting. Rona was shot in the head and fell at the front door. Mason claimed that Rona had first fired at him. In the living room he encountered Mrs. Jamerson and shot her. This shot was fired from a distance of two inches into her breast. Mrs. Jamerson died immediately and Rona was hospitalized for a long time. She became totally deaf in the right ear and suffered partial paralysis. Mason was arrested the following day at a road block in Arizona. At the trial he testified it was he who had attacked Rona with the screwdriver in January of 1959; admitted that he had sent a man to the house prior to February 17 to see whether there was anyone there; admitted that he had broken into the Porrazzo home on February 16. He said that he had come for the purpose of attempting to frighten Rona for the purpose of recanting her accusations that he had attacked her February 27, 1958, at her home.

Mason has at all times insisted for a considerable period of time he engaged in intimacies with Rona and stated that in part the beatings which he admitted were perpetrated at her request because she was a masochist who required beating as a prelude to sexual satisfaction. Rona Porrazzo has at all times denied no such relationship.

#### LEGAL QUESTIONS

In the opinion of the writer there are no legal questions of concern to the Governor at this time.

#### BACKGROUND DATA

##### Sociological Factors

Mason was born October 22, 1911 in Minot, North Dakota. His mother and two other brothers left the home before Mason was three and his father never told him much about them. The father, a bricklayer, moved about the Northwest where ever work was available.

Mason never had much supervision and grew up a lonely and neglected child. He did not do well in school and was in the retarded group. He quit at age 15 after having had to repeat classes frequently.

Mason was first employed at odd jobs. He came to California and has resided here since 1930. During the war years he became a skilled steelworker.

He married Vickie Beabier in 1941 and was divorced in 1949. There are two daughters.

##### Criminal History

Other than the assault charge brought against him by Rona Porrazzo after the incident of February 27, 1958, Mason has been involved

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in no serious prior difficulties. He has had a number of minor arrests but no felony convictions.

#### Psychological Evaluation

On the Wechsler Adult Intelligence Scale he falls into the average category with a score of 100. There is indication of some intellectual deterioration. There are also evidences of difficulty in memory so as to indicate possible organic brain damage.

The Minnesota Multiphasic Personality Inventory indicated no gross psychopathology, although there is definite indication of hysterical reactions and psychosexual difficulties. No antisocial propensities are evident. The test further indicates that such impairment of judgment and behavior as he has is not due to psychotic ideation or perception.

#### Neuropsychiatric Examinations

##### Court Appointed Psychiatrists

When Mason pleaded not guilty by reason of insanity, Doctors Khacher Tutunjian and John Paul Walters were appointed to examine him. They reported (Clk. Tr., pp. 4-9) that he was sane at the time of the examination and at the time of the commission of the offenses. The plea was thereafter withdrawn.

##### Neuropsychiatric Examining Committee

The Committee reports that Mason has an emotionally unstable personality with neurotic and hysteroid features, but that he is not insane.

##### Electroencephalogram Studies

Because the clinical psychologist reported indications of brain damage suggested in the Wechsler testing, I asked Dr. Schmidt to give us a special report on the EEG findings. The report is attached under "Neuropsychiatric Examinations." The EEG showed definite abnormality of brain wave.

Dr. Schmidt says that his waves are similar to those noted in the Charles Brubaker case but are not as sharp and spiking, i.e., they are not as pin-pointed. They are more diffuse, are smaller and scattered throughout the tissues. They therefore point less to a single traumatic origin (as in the case of Brubaker's automobile accident) and more to a generalized cause. He describes them as "epileptiform" (i.e., like epileptic indicia) but not true epilepsy.

Again this condition is often associated with aggressive and compulsive behavior. Sometimes the irritations build up over a period of time until they are released in explosive action. The EEG findings must be correlated with the total personality structure as shown by the neuropsychiatric, psychological, sociological and other data, in order to be meaningful. Dr. Schmidt says there is not otherwise any evidence of psychosis or mental illness. Mason is not insane.

#### RECOMMENDATIONS OF INTERESTED PERSONS

##### Trial Judge

In his formal letter of July 1, 1960, Superior Judge Mark Brandler makes no recommendation for clemency. I have however instructed the Adult Authority investigators to sound out informally the judge and other officials on these matters as they will sometimes discuss informally what they will not put into recommendations. In this instance the investigator reports that the judge indicated that had the case been before him without a jury he might have considered life imprisonment. (See "Investigation", page 2). He believes there had been intimacies between Mason and Rona Porrizzo. His statements were given and received in confidence.

##### Law Enforcement Officials

The District Attorney and Glendale Police Department make their unvarying recommendation against clemency.

Police Sergeant Chambers of the Glendale Police Department -- in confidence -- voices the belief that there was in fact a sexual affair between Mason and Rona; he also suggests that the defense was inadequate while the prosecution "smoothly" emphasized the "felony-murder" aspects of the case. From this I gather that the Sergeant feels that a more adequate defense might have avoided the death penalty. With this I agree. It should be noted ("Investigation", page 7) that the defense lawyer claim that the District Attorney at one time offered to accept a plea for life imprisonment, but that Mason rejected it.

#### GENERAL CONCLUSIONS

A careful examination of this record indicates that Mason was obsessed with Rona Porrizzo to such an abnormal extent that he felt she had some kind of control over him. There are indications that this obsession may have been the product of an adulterous relationship continued through the period of the several assaults upon her, and it is difficult to credit Mason's claim that Rona was an extreme masochist who needed

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the beatings which he inflicted upon her. I suspect that there was in fact a sexual relationship between Mason and Mrs. Porrazzo, but that it had been short and had been terminated as far as she was concerned. Mason however was not willing to let it die. He pursued her and it with a paranoid intensity. She was terrified of him, wanted nothing more to do with him, and did her utmost to avoid him. He would not let her go. His assaults upon her in the parking lot in November 1958, at her home in January 1959, and followed by the final shooting and killing--add up to a distorted and nightmarish picture of fury and jealousy beyond imagination.

Mason genuinely regrets killing Sue Jamerson. But this only sharpens his chagrin that Rona Porrazzo, in his words, "still walks the street free."

Nothing in this record adds up to justification, provocation, and little amounts to mitigation. This man has severe emotional problems, but they are almost exclusively centered about Rona. The EEG confirms the psychological test results that he is deeply neurotic, compulsive, a violent and unyielding personality. The psychiatrists--both at the prison and at his trial--say he is not insane and not mentally ill. I would say this is a classical picture of paranoia but I do not purport to second-guess the experts.

The verdict of first-degree murder is justified by the evidence. I have read the transcript and believe he was adequately and competently represented. I am told that Norman Sugarman (now replaced by Carl Shapiro) is regarded as capable. This was just a tough case and anyone would have had a hard time keeping Mason out of the gas chamber.

Cecil F. Poole  
CFP:y

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 77: Materials Relating to the Clemency of Veron Atchley  
(August 22, 1961)**

## Executive Department

State of California

### COMPUTATION OF SENTENCE VERON ATCHLEY

Following the historic policy of California Governors in all extreme penalty cases and under the mandate of our Constitution, I have carefully considered the case of Veron Atchley, who was convicted in Butte County of the crime of murder, first degree, in 1958. My study of this matter included a review of the reports submitted by the District Attorney, the Trial Judge, the Defense Attorney, the Attorney General, the Adult Authority, the report of the psychiatrists who comprise the Neuropsychiatric Examining Committee, and the Opinion of the Supreme Court of California.

The record in this case clearly shows that Veron Atchley murdered his wife Marcella Katherine Atchley after lying in wait, concealed in a back alley. However there are some mitigating factors in this case. This unfortunate killing occurred at a time when Veron Atchley was consumed with jealousy under the belief that his estranged wife had just spent the evening in the company of another man.

Mr. Atchley's attorney attempted to produce evidence at the trial concerning his mental condition. Upon objection by the District Attorney the trial court refused to permit such testimony. The California Supreme Court held that such refusal to permit this medical testimony was erroneous but not prejudicial and did not result in a miscarriage of justice.

Veron Atchley was originally scheduled to be executed on March 25, 1960. He was granted a reprieve until April 15, 1960. On April 29, 1960, I conducted a clemency hearing in this matter. On May 23, 1960, the United States Supreme Court granted a stay of execution in order to review this case. Subsequently the United States Supreme Court denied his petition, and Veron Atchley was scheduled to be executed on August 23, 1961.

On August 14, 1961, I reviewed the case again. I learned at this time that he was described by the prison psychologist as mentally defective and illiterate, with an I.Q. of 60. I also noted that Veron Atchley had complained of suffering headaches, and of an inability to sleep which followed a blow to the head in 1950. In order to determine if this claim of an injury to the head was truthful and whether it might have some bearing on this case, I ordered that an electroencephalogram test be conducted. I received the



## Executive Department

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results of this test on Friday, August 18, 1961. The test shows that Veron Atchley had definitely suffered serious damage to his brain and to his central nervous system. I was informed by competent medical authorities that this condition could cause him to be more impulsive in situations of emotional stress and to act with less judgment and emotional control than a person with a normal brain under like circumstances. In other words according to the psychiatrists who examined him this crime very likely was the product of a damaged brain reacting to the stress of the emotion of jealousy, and if so, Veron Atchley cannot be held to be totally responsible nor completely accountable for his crime. Let me stress that none of this information concerning the injury of Mr. Atchley's brain and central nervous system was available at the time of trial, nor was it known to the Trial Judge, District Attorney or the Defense Attorney. Had this evidence of brain damage which resulted from my investigation been known to the District Attorney, I am certain that he would have recommended that Veron Atchley's life be spared and that he suffer a penalty of life imprisonment.

I am mindful of the considerations of orderly law enforcement, and of even handed justice, and of the great respect which must be accorded to the decisions of our courts and juries. However should I fail to act to spare the life of Veron Atchley under the facts and circumstances of this case, and in light of the evidence of serious damage to his brain and central nervous system which could have produced the violent conduct involved in this case, a great miscarriage of justice might result. I am sure that the strongest advocates of capital punishment would agree with me that it would be inhumane and barbaric to permit a person to suffer the extreme penalty who is not wholly responsible for his acts, and incapable of a complete freedom of choice.

Under all the circumstances of this case, considering the nature of this sad occurrence, the emotional factors above set forth, and the damaged nature of Veron Atchley's brain, I have concluded that the interests of society and justice will best be served by granting to Veron Atchley a commutation of sentence from death to life imprisonment without possibility of parole.

NOW, THEREFORE, In view of the foregoing consideration, I, Edmund G. Brown, Governor of the State

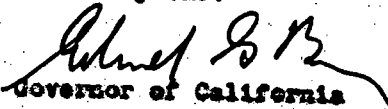
Executive Department

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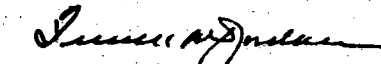
PAGE THREE

of California, pursuant to the authority vested in me by the Constitution and statutes of the State of California, do hereby grant to Veron Atchley, San Quentin No. A-50596, a commutation of sentence from death to life imprisonment without possibility of parole.

IN WITNESS WHEREOF, I have here-  
unto set my hand and caused  
the Great Seal of the State  
of California to be affixed  
this Twenty-second day of  
August, A.D. Nineteen Hundred  
and Sixty-one.

  
Governor of California

ATTEST

  
Secretary of State



Governor Edmund G. Brown today commuted to life imprisonment, without possibility of parole, the death sentence of Veron Atchley, who was to have been executed tomorrow in San Quentin's gas chamber.

Atchley was convicted of first degree murder in Butte County in 1958 for the slaying of his wife, Marcella Katherine Atchley.

Governor Brown said he commuted the death sentence on the basis of new evidence showing Atchley to have suffered "serious damage to his brain and to his central nervous system" from a blow on the head prior to commission of the crime.

Consulting psychiatrists advised the Governor that Atchley's head injury and resultant brain damage was "probably responsible" for Atchley's crime.

Atchley originally was scheduled to be executed on March 25, 1960. He was granted a reprieve until April 15, 1960. The Governor held a clemency hearing on April 29, 1960, and on May 23 of that year the U. S. Supreme Court denied Atchley's petition and a new execution date was set for tomorrow.

The Governor reviewed the case eight days ago and learned that a prison psychologist described Atchley as "mentally defective and illiterate, with an I.Q. of 60."

Atchley had complained at the time of his trial and later that a blow on the head in 1956 had resulted in recurring headaches and inability to sleep.

At the Governor's request, an electroencephalogram test was conducted on Atchley late last week at San Quentin.

"The tests show that Veron Atchley had definitely suffered serious damage to his brain and to his central nervous system," the Governor said in his commutation statement.

"I was informed by competent medical authority that this condition would cause him to be more impulsive in situations of emotional stress and to act with less judgment and emotional control than a person with a normal brain under like circumstances.

"Let me stress," continued the Governor, "that none of this information concerning the injury to Mr. Atchley's brain and central nervous system was available at the time of trial, nor was it known to the Trial Judge, District Attorney or the Defense Attorney.

"Had this evidence of brain damage which resulted from my investigation been known to the District Attorney, I am certain that he would have recommended that Veron Atchley's life be spared and that he suffer a penalty of life imprisonment.

"I am sure that the strongest advocates of capital punishment would agree with me that it would be inhumane and barbaric to permit a person to suffer the extreme penalty who is not wholly responsible for his acts, and incapable of a complete freedom of choice."

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# GOVERNOR'S OFFICE

## INTEROFFICE MEMORANDUM

### SACRAMENTO

TO Files  
FROM Arthur L. Alarcon


DATE August 22, 1961

SUBJECT VERON ATCHLEY

At the request of the Governor I called District Attorney Keith Lyde at 3:30 p.m. on August 21 to advise him that the Governor's "present thinking" was that he was going to commute Atchley's sentence to life without possibility of parole.

District Attorney Lyde's immediate reaction was to state that he of course did not agree with the Governor. I explained to him that as a result of an EEG the Governor had learned that Atchley had suffered serious brain damage which was the probable cause of his violent conduct resulting in the death of his wife.

Mr. Lyde asked me why it took so long to discover this "new evidence". I advised him that the Department of Corrections had performed an EEG in February 1960 and had been advised that a series of such tests should follow. However no such tests were conducted until 18 months later in August of this year. Mr. Lyde stated that he had no way of cross examining the psychiatrists at this late date and for that reason was more than a little skeptical of their conclusions. He also stated that this was clearly a lying-in-wait case and not the result of impetuosity. I suggested that with this type of brain damage the jealousy caused by the absence of his wife built up throughout the evening until it exploded in his killing his wife. On behalf of the Governor's Office I apologized to Mr. Lyde that the test results were announced at such a late hour and advised him that I was meeting with Director McGee to see that this did not recur.

  
Arthur L. Alarcon  
Clemency Secretary

ALA:jm

STATE OF CALIFORNIA

INTER - DEPARTMENTAL COMMUNICATION

RETENTION PERIOD

Do not retain for filing ☐

Hold Until \_\_\_\_\_

To: Honorable Edmund G. Brown  
Governor of California

Date: 18 August 1961

File No.: A-50596

Subject: ATCHLEY, Veron  
(Condemned)

Attention: Arthur Alarcon  
Secretary

From: Department of Corrections, Sacramento 14

In a telephone conversation with Dr. David Schmidt, Chief Psychiatrist of San Quentin, he advises that the following additional information is pertinent to the case of the above-named inmate. A current Psychiatric Report will include this information and in other respects the report will be similar to the one recently received.

The information obtained by telephone was as follows:

This type of brain wave tends to be present in people who have suffered some serious brain damage and have a residual of increased sensitivity, emotional lability and irritability. They are somewhat less able to control emotional situations and impulses. As in the epileptic personality these factors may be somewhat mitigating because of the person not having full normal emotional control. These personalities are treatable. Under treatment much like the epileptic, they show more control emotionally and can be useful members of society.

RICHARD A. MCGEE  
Director of Corrections

By

*Peter J. Murry*

Peter J. Murry  
Chief Records Officer

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 78: Materials Relating to the Clemency of  
Charles James Golston (May 2, 1963)**

## Executive Department

State of California

### COMPUTATION OF SENTENCE CHARLES JAMES GOLSTON

Charles James Golston was convicted of the crime of first degree murder on January 12, 1962, by the Superior Court of the State of California in and for the County of Los Angeles. On January 15, 1962, the trial judge fixed the penalty at death, and on January 29, 1962, the trial court sentenced Golston to be executed in accordance with applicable law.

Pursuant to the mandate of Article VII of the California Constitution and following my policy in all death penalty cases, I have carefully reviewed this case to determine if any cause existed for the exercise of executive clemency. This examination included a study of the transcript of the trial on the question of guilt and also the transcript on the proceedings as to the appropriate penalty to be assessed, the report of the neuropsychiatric committee at San Quentin, the reports of the Warden and the custodial staff on condemned row, and the opinion of the California Supreme Court.

The evidence produced at the time of trial indicated that Golston strangled Bora Cutting while in the commission of an act of rape on August 23, 1961. At the trial, Golston's defense was based on the premise that he did not intend to strangle Mrs. Cutting but that he only intended to prevent her from crying for help.

At the time of his trial, no psychiatric testimony was presented as to Golston's mental condition. Subsequent to his receipt on condemned row, however, he has been examined on several occasions by the neuropsychiatric committee, and these distinguished psychiatrists have uniformly concluded that while he is not legally insane, Golston has a personality pattern disturbance, inadequate personality with voyeurism and schizoid features. This important information was not presented to the trier of fact at the time of Golston's trial.

The prison psychiatrists who have examined Golston in prison and who discovered his voyeuristic tendencies have informed me that they feel he is capable of responding to psychiatric treatment and psychotherapy. They further inform me that a person with voyeuristic tendencies and psychosexual problems generally responds quite favorably to psychiatric treatment.

At the time this crime was committed, Golston was only twenty years old, and he is not yet even twenty-two years old. Letters have been received by me from his former acquaintances and neighbors pointing out the high regard in which he has always been held in the community where he lived. During his high school career he received average grades even though his I. Q. tests indicate that he is in the dull-normal intelligence category.



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A study of Golston's past record indicates that he has no recorded criminal record - either convictions or arrests.

The evidence at the trial was conflicting as to whether he intentionally killed Mrs. Cutting, and there is strong indication that he killed in a momentary panic reaction arising out of fear of apprehension. He was convicted on a finding of first degree murder based on the operation of the felony-murder rule, under which a killing - intentional or accidental - automatically becomes first degree.

The custodial staff at San Quentin has advised me that Golston has presented no custodial problems to them since his receipt in the prison and that he appears to be capable of making a good adjustment to prison life.

Under the present California statutes a person convicted of murder in the first degree can only be sentenced to either execution or life imprisonment, and this latter sentence can mean that a person could be released after serving seven years in prison, even though the average sentence is closer to twelve years. The choice presented to the trier of fact in these cases is, therefore, extremely limited and they are not afforded the opportunity of fixing a penalty of life without possibility of parole.

I have concluded from all of the evidence presented to me and after reconsidering the matter in its entirety that this is a proper case for the exercise of executive clemency. Golston's conviction is based on a killing which occurred in the commission of a felony and which is based on the felony-murder doctrine. The crime was a senseless one triggered by panic which I am convinced was not premeditated or planned in the true sense of the word. Examination of Golston subsequent to trial has disclosed important psychiatric facts, which while they do not excuse the crime, at least would have been of material assistance to the trier of fact in determining the appropriateness of the penalty.

Golston has no prior history of either violent or dangerous behavior and his present conduct in prison indicates that he responds well to authority. There is every reason to believe that he will also respond favorably to psychiatric assistance, and in my opinion the best interests of justice would be served by commuting his present death sentence and by the granting of a limited commutation of sentence to life without possibility of parole.

Executive Department

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NOW, THEREFORE, In view of the foregoing considerations, I, Edmund G. Brown, Governor of the State of California, pursuant to the authority vested in me by the Constitution and statutes of the State of California, do hereby grant to Charles James Golston, No. A-70908, a commutation of sentence from death to life imprisonment without possibility of parole.

IN WITNESS WHEREOF, I have here-  
unto set my hand and caused  
the Great Seal of the State  
of California to be affixed  
this  
day of *2nd May* A.D.  
Nineteen Hundred and Sixty-  
three.

*Edmund G. Brown*  
Governor of California

ATTEST

*Steven M. Jordan*  
Secretary of State

By *Walter C. Smith*  
Assistant Secretary of State



FOR IMMEDIATE RELEASE

Governor Edmund G. Brown announced today he has granted a limited commutation to a life sentence without possibility of parole in the case of Charles James Golston, 22.

Golston was to have been executed tomorrow (Friday). Federal Judge William Sweigert of San Francisco granted a stay of execution for the purpose of further psychiatric study earlier today.

Golston was convicted in Los Angeles in 1962 of the slaying of Mrs. Alma Cutting in 1961.

The Governor said in issuing the commutation:

"I have concluded from all of the evidence presented to me and after reconsidering the matter in its entirety that this is a proper case for the exercise of executive clemency. Golston's conviction is based on a killing which occurred in the commission of a felony and which is based on the felony-murder doctrine. The crime was a senseless one triggered by panic which I am convinced was not premeditated or planned in the true sense of the word. Examination of Golston subsequent to trial has disclosed important psychiatric facts, which while they do not excuse the crime, at least would have been of material assistance to the trier of fact in determining the appropriateness of the penalty.

"Golston has no prior history of either violent or dangerous behavior and his present conduct in prison indicates that he responds well to authority. There is every reason to believe that he will also respond favorably to psychiatric assistance, and in my opinion the best interests of justice would be served by commuting his present death sentence and by the granting of a limited commutation of sentence to life without possibility of parole."

\* \* \*

# Memorandum

To : Governor Brown

Date : April 30, 1963

Subject: GOLSTON, Charles

From : John S. McInerny

Execution date: May 3, 1963

*Aut  
Kurtz was  
on it in my  
writing*

Pursuant to your instructions, I have been attempting to draft a proposed commutation for Charles James Golston, but I am frankly having a great deal of difficulty in doing so.

The clemency hearing on this case was held prior to my arrival in the office and you announced your decision denying a commutation by press release dated, January 21, 1963, the first day I was here. I have, however, studied this file at great length. I have also studied at length your previous commutations, and in each one of these commutations there was strong evidence of mitigating factors which militated against the execution.

In Golston's case, however, the crime was particularly horrible and repulsive and since the clemency hearing no new evidence has been presented to us which in any way changes the picture. Having previously denied clemency to him and having no new evidence upon which to base a reconsideration, you will be placed in the dilemma of either granting a commutation without such new evidence or admitting you were in error in the first place. The effect of either choice on the administration of justice would be in my opinion disastrous.

I realize that you are strongly impressed with the youth of Golston, and also with the fact that he had no prior record, but these two factors were both presented to you at the earlier clemency hearing and were deemed by you to be insufficient upon which to base a commutation. Likewise his mental condition which was previously considered by you has not changed since your prior action.

I realize the value that a human life holds for you, but I am frankly at a loss in writing the draft of this commutation in finding adequate justification for it.

*John S. McInerny*  
JSM:js

# Memorandum

JM

To : Governor Brown

Date : April 15, 1963

Subject: GOLSTON, Charles J.  
Condemned

From : John S. McInerny

Several days ago you indicated to me that you were thinking of reconsidering your earlier decision to deny executive clemency to Golston, and you requested me to look into the matter.

Pursuant thereto I have studied this man's file, and it is my respectful recommendation that you should not disturb your earlier decision.

In our brief discussion, you related this case to the recent trial of Dr. DeKaplany in San Jose and pointed out that since he did not receive the death penalty, neither should Golston. However, the two cases are substantially different. In the case of Dr. DeKaplany, there was a great deal of psychiatric testimony tending to show that he was insane, and seriously mentally ill; moreover, the jury members indicated this testimony played a strong part in their eventual decision. In Golston's case, no such testimony was presented, nor was it even suggested to the court that he was insane nor mentally ill. Note that he did not enter a "not guilty by reason of insanity" plea.

Also, I am sure that you have read in the newspapers of the recent horrible murder in Reno, and have noted that subsequent to our discussion the police have secured a confession from the apparent killer. I am sure that you have, as have I, noted the striking similarities in the two crimes. (I have attached a copy of a recent newspaper article on the case). Note that in the Reno case, the killer was searching for ladies' underclothing to satisfy his fetishism for women's undergarments and was attracted to the girl's apartment by seeing her garments hanging on the clothesline. After being so attracted, he entered the girl's apartment with the intent of raping her, but ended up killing her with a garrote before having intercourse with her.

Golston, of course, had a similar fetishism problem; namely, he got a degree of sexual gratification of cutting up women's undergarments because they took on sexual symbolish for him. He

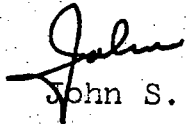
Memo to Governor Brown

Page 2

entered for the purpose of rape, garrotted his victim, and then raped her in spite of the fact he knew the police had already been summoned to the area.

The striking similarities between the two crimes are certain to cause a particular problem at this time because they demonstrate that persons with a fetishism problem may have a high violence potential.

Also, both Golston's attorney and a minister from the Long Beach area have written and requested the setting of a second clemency hearing in this case. Neither person has indicated that they have any new facts or materials to add to what was already presented to you.



John S. McInerny

JSM:js

# GOVERNOR'S OFFICE

## INTEROFFICE MEMORANDUM

### SACRAMENTO

TO Governor Brown

DATE January 15, 1963

FROM Arthur L. Alarcon

SUBJECT CHARLES JAMES GOLSTON  
Execution Date January 25, 1963

#### RECOMMENDATION:

There is insufficient evidence of mitigating circumstances in this case to justify the exercise of the Governor's clemency powers.

This is a difficult case. Charles James Golston is only twenty-one years old. He has never been previously convicted.

However, he has committed a brutal, vicious, shocking crime. His victim was a helpless 79 year old woman. He has a deep seated sexual problem which has manifested itself in rape and murder.

#### FACTS OF THE CASE:

On August 28, 1961, in Long Beach California, Golston entered the apartment of Dora Cutting, a 79 year old woman, living alone. He awakened her and told her not to scream. He then beat her until he blackened both her eyes and caused blood to flow from her nose, mouth and ears.

He removed her panties and then began to forcibly rape her. To prevent her from screaming, he held his fingers at her throat and placed a pillow over her head. One of Mrs. Cutting's neighbors in the apartment house heard a scream and called the police. When the police arrived they circled the building. Golston saw them as he was raping Mrs. Cutting. He drew the window shade and continued to rape his victim. When he saw the officers again through the window, he removed the pillow slip and fashioned a garrote and slipped it around her neck. He used such force in strangling her, that he caused hemorrhages to the base of her tongue. Mrs. Cutting died as the result of this strangulation. When she expired, her bowels evacuated involuntarily. Golston continued to rape her after her death. Fecal matter was found on his clothes after his arrest. Golston was captured coming out of the apartment house.

One week before he murdered Mrs. Cutting, he attempted to enter the apartment of her daughter with the intent to rape. She heard his movements and frightened him off. Golston threatened her and told her not to call the police.

Golston's defense was based on the premise that he did not intend to strangle her, only to silence her. He claimed he

fashioned the pillow slip into a knot only to slip over her mouth, and not around her neck.

#### HISTORY OF THE CASE:

Mrs. Cutting was murdered on August 28, 1961.

On September 26, 1961, Golston pleaded not guilty to an information charging him with one count of the crime of murder. (No insanity plea was entered).

On January 10, 1961, Golston waived his right to a trial by jury and requested a court trial. Judge Fred Miller then began the taking of testimony on the not guilty plea.

On January 12, 1961, Judge Miller found Golston guilty of murder in the first degree.

Deputy District Attorney Lynn Compton prosecuted this case on the felony-murder theory as well as a premeditated murder because of the garroting of the victim.

On the same date, Judge Miller heard testimony relative to the appropriate penalty.

On January 15, 1962, Judge Miller fixed the penalty at death.

On October 9, 1962, the California Supreme Court, in an opinion written by Mr. Justice McComb unanimously affirmed the judgment of conviction.

The execution is scheduled for January 25, 1963.

#### LEGAL QUESTIONS:

A careful review of the trial transcripts failed to reveal any legal grounds for exercising clemency in this case.

Main legal questions raised on the automatic appeal:

1. Golston contended he was entitled to a jury trial on the penalty phase of the case.

The Supreme Court held that pursuant to Penal Code section 190.1, if the trial court determines the question of guilt after a jury waiver, then the trial court also shall determine the proper penalty.

2. Golston also contended the evidence was not sufficient to sustain his conviction of first degree murder.



The Supreme Court ruled that there was sufficient evidence to prove that Mrs. Cutting was murdered during the perpetration of a rape.

3. Golston further contended the deputy district attorney committed misconduct in his argument to the court.

The Supreme Court held that there was no misconduct, and, in any event, the defendant failed to object.

PRIOR CRIMINAL RECORD:

Golston has no recorded prior criminal record. However, he admits to numerous acts of destruction of female clothing on clotheslines to satisfy his fetishism. He also admitted numerous acts of voyeurism.

One week before the rape-murder of Mrs. Cutting, he attempted to enter the apartment of her daughter with the intention of committing rape. He was frightened off and made good his escape.

MENTAL CONDITION:

Golston is sane and has an I.Q. of 83. He is in the dull-normal intelligence category.

The neuropsychiatric committee characterizes him as "Personality Pattern Disturbance, Inadequate Personality with Voyeurism and Schizoid Features."


BIOGRAPHICAL MATERIAL:

Golston, now 21 years old, was born on August 2, 1941, in Arkansas. His father is a construction worker with a sixth or seventh grade education. His mother is a domestic worker with a sixth grade education.

His parents describe his home situation as good. Golston claims his father drank excessively and frequently fought with his mother.

His parents separated in 1958. They have since attempted to reconcile.

Golston graduated from high school in June, 1959. He received average grades and was considered an obedient student.

  
Arthur L. Alarcon  
Executive Secretary

**Memorandum**

To: The Honorable Edmund G. Brown  
Governor of California  
State Capitol  
Sacramento, California

Attention: Mr. Arthur L. Alarcon  
Executive Secretary

Date: December 14, 1962

File No.: A-70908 - CC 206

Subject: GOLSTON, Charles James  
(Death Penalty Case)

From: Adult Authority- Administration Office, Special Investigation Unit.

INTRODUCTION

Executive Secretary Arthur L. Alarcon referred this case to the Adult Authority on November 23, 1962. Mr. Golston was sentenced to death by the Honorable Fred Miller, Judge of the Superior Court, Los Angeles, California. Execution is scheduled for January 25, 1963.

PERSONS INTERVIEWED

I. Committing Judge:

Honorable Fred Miller

Los Angeles County

II. Prosecuting Official:

Mr. Lynn D. Compton  
Trial Deputy District Attorney

Los Angeles County

III. Law Enforcement Officials:

1. Honorable William J. Mooney  
Chief of Police

City of Long Beach

2. Mr. John M. Black  
Captain of Police

City of Long Beach

3. Mr. Gerald E. McIntire  
Inspector, Police Department

City of Long Beach

4. Mr. John Charney  
Polygraph Operator, Police  
Department

City of Long Beach

5. Mr. Warren B. Jordan  
Investigator, Police Department

City of Long Beach

6. Mr. Leonard Hermansen  
Investigator, Police Department

City of Long Beach

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IV. Defense Attorneys:

1. Mr. Ellery E. Cuff  
Public Defender  
Los Angeles County
2. Mr. Hayes F. Mead  
Deputy Public Defender  
Los Angeles County

V. Appeal Attorney:

Mr. Morris Davis  
7020 South Western Avenue  
Los Angeles, California

VI. Condemned Person:

Mr. Charles James Golston, A-70908  
San Quentin

COMMITTING JUDGE

Judge Fred Miller:

Judge Miller was interviewed on December 7, 1962. He stated:

"This is the case of a young negro fellow, twenty (20) years old at the time of offense, who raped and killed an eighty-one (81) year old woman. He had been to this apartment house previously, and had some mix up with a woman. He came back later to the victim's place, went in to her apartment, tried to have intercourse with her, raped her, and afterwards took a pillowcase off of a pillow and strangled her to death. This was a gory mess since she had a bowel movement and he had fecal matter on his shorts.

"There was no plea of insanity and nothing in this case to call for such a thing. Mr. Golston stipulated the case be tried without a jury. He knew what he was doing.

"This was a vicious, foul murder. He should not escape death. I sent him to the gas chamber. This case was duly appealed and unanimously affirmed.

"I am definitely in favor of the death penalty. I think some cases call for it. I am basically in favor of the death penalty for the purpose of punishment. A man or woman who cold-bloodedly kills should have his life taken away also."

Judge Miller related that his philosophy toward the death penalty was based in his Catholic religious belief that we will be punished for our sins, and his twenty eight years of judicial experience. He declared, "A man who inhibits another's life by taking it should have his life forfeited."

Judge Miller called attention to numerous plaques and awards in honor of his services that bedeck his chambers. He commented that he knew the problems of juveniles because he had dealt with them as Judge of the Juvenile Court for eight (8) years. He sat on the Master Calendar for three (3) years. This has been his only Death Penalty case. He expressed a sincere concern for his responsibility in respect to taking this young man's life.

"I feel that I am anything but a cold-blooded person interested in taking the life of a young person. If there is justification to spare a life, I'll do it. I always give the very lightest incarceration and/or penalty to serve the ultimate purpose, which I consider rehabilitation. None of this is involved in this case."

"I definitely and strongly feel the Governor should not intervene in this case. Everything in the trial was completely fair. The penalty was completely just. This man is a cold-blooded murderer. He showed no remorse or concern for his victim."

Judge Miller referred to page ten (10) of the Supreme Court Opinion which contained the following:

"The defendant had a fair and impartial trial before an able trial judge. The judgment was unanimously affirmed and there was no error in the record."

The premeditated crime aspect of the case made it a capital punishment offense, Judge Miller believes.

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PROSECUTING OFFICIAL

Deputy District Attorney Lynn D. Compton:

Mr. Compton was interviewed on December 3, 1962. His statement follows:

"This is a so-called Felony-Murder coupled with a degree of premeditation. When Golston took a pillow-case to garrote this victim he took time to fashion the murder weapon, and this involved premeditation. He could have stopped her screaming by putting one hand over her mouth, punching her, etc., but instead he chose to kill her.

"An aggravating feature urged on the court was the fact that he had returned from having been there the week before. The average person would have been frightened away unless he were a particularly aggressive person.

"Anyone who would crawl into an occupied apartment, knowing it was occupied, obviously bent on raping a woman, is mighty cold. The burglar who enters what he believes is an empty apartment, during a crime of stealth, is not as serious as one who knowingly enters, and additionally enters, for the purpose of assaulting the occupant. Obviously, this man was there for one purpose- to rape. Therefore he must have believed the woman was there as it would have been an idle act otherwise. Another aggravating feature apparent to him must have been that this was an elderly woman. Further aggravation rests in the circumstances of the crime itself. He had had a false start the week before which did not dissuade him in his efforts.

"The nasty part of this incident was that the victim lost her bowels, but he continued to have intercourse. Fecal matter was found on his shorts. This crime was an especially violent, vicious one. The viciousness of this defendant was displayed by his presence of mind, and complete disregard for the victim in fashioning a garrote from the pillow-case, and deliberately strangling her to death.

"The facts warrant the death penalty. I see nothing to mitigate this situation. The penalty was appropriate and the trial was fair. I argued to the judge that this was an appropriate death penalty case.

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"This defendant seemed not to exhibit much emotion, and was not very communicative. Outwardly he was calm, stoic, and unconcerned."

Mr. Compton commented that he strongly believed in the death penalty. He felt if there were any lack of certainty regarding the death penalty it was in the ultimate result of its application. He felt that it should be enforced probably to a greater degree than it is. He believed the Felony-Murder case was generally the case which called for the death penalty. He did not feel the Governor should intervene.

#### LAW ENFORCEMENT OFFICIALS

##### Chief of Police William J. Mooney:

Chief Mooney was interviewed on December 4, 1962. He commented that the offense was premeditated murder, which is supported by the facts. Mr. Golston's janitorial assignments had presented the opportunities to prowl, and seek out just such a crime opportunity. Furthermore, he had attacked the same property before.

Chief Mooney stated that the death penalty is appropriate in this case. He advocated the death penalty. He added that each case must be judged on its merit.

Chief Mooney declared that Mr. Golston was given a fair and just trial, and that the Governor should not intervene. He expressed the feeling that Mr. Golston would commit a like offense should he be released.

##### Police Captain John M. Black:

Captain Black was interviewed on December 4, 1962. Inspector Gerald E. McIntire, Investigators Warren B. Jordan and Leonard Hermansen, and Polygraph Operator John Charney were present.

They said that Mr. Golston related to them that he had gone into this apartment with the intent to rape any woman he could find on the premises. Captain Black added that this was sufficient to show his thoughts of premeditation. Furthermore, his actions bore this out.

They commented that the case was aggravated in that Mr. Golston continued to choke the woman and to rape her in spite of the fact that police were in the area. Mr. Golston must have known someone was there; there were noises and voices outside.

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Mr. Charney stated that the polygraph bore out the fact that Mr. Golston had gone there to rape someone. Mr. Golston voluntarily submitted to a polygraph. Later he admitted that he had gone to the apartment with the express purpose of raping a woman.

Investigators Jordan and Hermansen stated that all during the investigation Mr. Golston had shown a calm, nonchalant, unremorseful attitude. Furthermore, Mr. Golston wanted to complete the act regardless of the consequences. They added that Mr. Golston had pubic hair around the corners of his mouth at the time of his interrogation. After assaulting the woman, he tied a pillow-case around her neck with a knot that drew tighter from her struggling. Mr. Golston had indicated to these investigators that he knew the knot would not loosen.

The investigators related that Mr. Golston had stated he had been thinking about raping someone since midnight. He left his place of employment at three (3:00) a.m., after removing his shoes and all identification from his person - evidence of pre-meditation. Mr. Golston knew the police were present and he had plenty of time to release the victim and save her life. Instead, he chose to kill her.

These officers observed that this killing impressed them as being the most brutal and aggravated homicide they had investigated in a long time. They related that at no time during the investigation did Mr. Golston show remorse or feeling for the act that he had committed. They felt that the Governor should not intervene.

#### DEFENSE ATTORNEYS

Mr. Ellery E. Cuff  
Mr. Hayes F. Mead:

Mr. Cuff and Mr. Mead were interviewed in Los Angeles on December 3, 1962. They jointly related that the facts in the case spoke completely against Mr. Golston. The best thing they could say for him was that this was a First-Degree Murder by statute. They felt Mr. Golston did not intend to kill the victim. They felt this was legally a First-Degree Murder because of the Felony-Murder rule, but not morally so.

Mr. Cuff said he was opposed to the death penalty in this case, and that they took the chance that the judge might not invoke the death penalty. They waived a jury trial as they felt the judge might take a different view of the situation than a jury would, and show less hostility toward Mr. Golston.

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Messrs. Cuff and Mead expressed the feeling that this offense was comparatively less horrible than others in that Mr. Golston had not gone in to kill the victim. Although it had been brought out that the defendant may have gone to the apartment the week before, the daughter had not been able to identify Mr. Golston from the previous week they added.

Mr. Mead observed that the physical evidence of the arrest militated against Mr. Golston. Mr. Golston had maintained he put the pillow-case around the victim's mouth, and that it had slipped. Mr. Golston was trying to keep her quiet since the police were outside.

Both commented that the death penalty should not be imposed in this case, and reasonable penalty would be Life Imprisonment.

Mr. Cuff related that the Deputy District Attorney in this case was a very able and persuasive prosecutor. He opined that a less able prosecutor might not have gotten the same results. He said he felt this should be made a part of the record.

Messrs. Cuff and Mead contended that the death penalty does not deter crime. Comparative statistics do not show that the death penalty is valid, they added.

Mr. Mead depicted Mr. Golston as a quiet, mild and inadequate man. Mr. Golston was remorseful he said. Mr. Mead had made a motion for a new trial, but this was denied.

Mr. Cuff expressed an interest in sending a deputy to the Executive Clemency Hearing.

#### APPEAL ATTORNEY

Mr. Morrise Davis:

Mr. Davis was interviewed on December 3, 1962. He said he had been appointed by the Supreme Court. His statement follows:

"There is no question about this defendant's guilt. However, I feel there is something wrong with Mr. Golston. I believe this since a sane person, after finding a woman this old, and also knowing the police were outside, would not have proceeded with this deed. You would think he would have attempted to flee. I believe he did not intend to kill his victim.



"This does not seem the type of man that would set out to kill another. He carried no implements of murder with him. I feel this was merely an impulsive act. Further, I believe this is a reprehensible crime, but due to his state of mind, and his youth, I feel this should be presented in mitigation of the offense. I do not believe these are the actions of a sane person.

"I'm against capital punishment, and I have been a police officer for six (6) years. I feel it does not serve a useful purpose. I oppose it on religious grounds. We're interested in removing this man from society, but to take his life would not benefit the victim or society. Statistics do not indicate the death penalty has helped to diminish those crimes for which death is the punishment.

"I feel the Governor should intervene. I feel this man is not insane according to the McNaughten Rules, though. Since the Governor has the discretion to commute this man's sentence to life, I feel that he should consider this possible insanity and do so.

"The trial was essentially fair, but the defendant should not have taken a Court Trial in this case. The penalty was unjust since I believe the defendant has mental aberrations.

"Mr. Golston impressed me as being a below-average and dull individual who found it difficult to communicate. This man seemed to show remorse and commonly expressed it in facial expressions, shaking of the head, etc. He indicated to me that he wished he had not done it."

CONDEMNED MAN

Mr. Charles James Golston, A-70908

Mr. Golston was interviewed at San Quentin on November 15, 1962. He is a twenty-one (21) year old native of Broken Bow, Oklahoma. He followed his mother to California after his graduation from high school in 1959. He is a rather dull, but courteous individual who is capable of communicating on the verbal level. He is five feet five inches, and weighs one hundred fifty (150) pounds, having gained approximately twenty (20) pounds since his

incarceration. He spoke slowly and deliberately as follows:

He had never been in trouble before and this experience had taught him a lesson; he had always wanted to do something out of the ordinary because of his diminutive size; he wanted to be more than just average; he had graduated from high school and he wanted to live up to this reputation.

He would like the record to show that the Police Department advised him that he would have a better chance if he had a Court Trial; he thinks now that this advice was not good; also, on the basis of his lawyer's explanation to him, he had agreed to the Court Trial; he signed a confession; the police tape-recorded it; he would not have done this had the officers not told him he would receive a sentence of no more than three to seven years; he believes the officers tricked him into signing the confession; he told defense counsel about the officers tricking him.

He was going to burglarize his victim's apartment; he had arranged for a "fence" to handle his "loot"; this would have been put into his garage and later placed on the market; while working nearby, he had thought before about burglarizing this place.

He worked only part time as a janitor, working alone at night most of the time; occasionally, he worked with a crew; he denied he was earning \$65.00 a week at the time of the offense; he made about \$42.00 a week, and had worked at the Pacific Window-Cleaning Company about a year; he wanted to earn money to go to college; at the time, he owned a 1955 Chevrolet on which he was making payments of \$40.00 a month.

His father was an "old-timer" who believed only in "work, work, work"; ever since he was thirteen (13) years of age, he had been providing for himself; his father did not buy him anything; in fact, his father even disliked the fact that he consumed food off of his table; his father "threw things up to him" continually; he tried to please his father but was unable to do this; however, he respected his father; he would have left home, but was afraid he could not support himself; he had plans to go to Long Beach City College; he wanted to learn electronics, or something about electricity; if unsuccessful, he had planned to become a barber.

He played basketball in school; he could remember part of the Boy Scout Law, and had been a Scout about a year; he was a Patrol Leader, and liked the Scouts very much; while in school, he had various kinds of jobs, including cleanup work.

When he was about sixteen (16), series of incidents occurred in his home town which became the talk of the town; some person had cut up a woman's underclothes on a back clothesline and had repeated this on several occasions; he got the idea that he could get some recognition by doing the same thing; he began playing "cat and mouse" with the police; he cut up womens' underclothing with a knife; he would always do this at night; he could see the clothes in the backyard because there were no fences; he bragged about fooling the police on several occasions; he vehemently denied that he got any kind of satisfaction from this bizarre activity; he denied any sex problems.

On one occasion, he cut up his barber's wife's underclothes; he did this in retaliation against his barber who cut his hair poorly; in this way, the barber couldn't enjoy the profits derived from cutting his hair.

He was mad at the world when he committed Rape; he wanted to make his dad sorry; he didn't know what to do; he was working hard, but his father was never satisfied; he needed a steady, better paying job; life was becoming very complex for him, and he was so confused he did not know where to turn.

He wanted to work for himself, and then hire others; "To have them ask me for a job--have them ask for a job from me" is a remark that seemed to have special meaning for him.

Mr. Golston recalled window-peeping activities in Oklahoma; he engaged in this for a period of weeks after he came to California in 1959.

He had been attracted to the apartment house of his victim on more than one occasion; he had been there the week before, and had taken the screen off a window; he denied having any relations with the victim's daughter; he went into the apartment in search of jewelry, and hadn't seen

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the woman; she awakened and screamed; he put his hand over her mouth, telling her he wouldn't hurt her if she did not scream; he then raped her; he did not know why; she started to scream again; this time he put the pillowcase over her mouth to keep her quiet, he was not trying to kill her; he did not know the victim; he had no thought of raping a white woman; he had had previous intercourse with a white woman, one whom he had met through a mutual friend who preferred white girls; this man had "gotten him started"; he proclaimed his prowess with girls by stating that he had two to three girls "anytime I wanted them"; the Friday before the murder on Sunday, he experienced sexual intercourse.

He felt the Court could have been more lenient since this was his first offense; he had told the whole truth, and felt that nothing was to be gained by telling falsehoods at this juncture.

Mr. Golston said he'd kill himself if he got into any more trouble. When questioned about this self-murder tendency, Mr. Golston declared that when he made a promise to himself, he kept it, and he thought he could kill himself.

At the end of the interview he said that he felt bad about the fact that his classmates were succeeding and he was failing. He ended with the statement that he would like to have another chance in life.

Respectfully submitted

By

  
C. E. HALDERMAN  
Special Representative

CEH/cb

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 79: Materials Relating to the Clemency of William Lee Harrison  
(October 3, 1963)**

## Executive Department

State of California

### COMMITTEE OF SENTENCE WILLIAM LEE HARRISON

William Lee Harrison was convicted of the crime of first degree murder on June 29, 1962, by a jury in the Superior Court of the State of California in and for the County of Alameda. On July 6, 1962, the trial jury fixed the penalty at death, and on July 24, 1962, the trial court sentenced Harrison to be executed in accordance with the applicable law.

Pursuant to the mandate of Article VII of the California Constitution and following my policy in all death penalty cases, I have carefully reviewed this case to determine if any cause existed for the exercise of executive clemency. This examination included a study of the transcript of the trial on the question of guilt and also the transcript of the proceedings as to the appropriate penalty to be assessed, the reports of the neuropsychiatric committee at San Quentin, the reports of the warden and the custodial staff on condemned row, and the opinion of the California Supreme Court.

The evidence produced at the time of trial indicated that Harrison stabbed Doris Ann Martin to death on December 11, 1961. For a period of some three to five years prior to the stabbing, Harrison had been living in a common law relationship with Mrs. Martin, although they had broken up this relationship several weeks prior to her death. The evidence indicates that the emotional upheaval accompanying the termination of this relationship was the primary cause of Mrs. Martin's murder.

In my analysis of this case, one of the factors which has most strongly influenced me was Harrison's disturbed mental condition at the time of the crime.

As early as 1949, when Harrison was in the Army, he was placed under psychiatric observation for a period of time in a military hospital. At that time he was diagnosed as a psychopathic personality with emotional instability.

Earlier electroencephalographic examinations performed on Harrison suggested the possible presence of organic brain damage in him; consequently, I ordered further and more extensive tests conducted.

These tests have now been completed, and the most recent neuropsychiatric report was received by me several days ago. These tests confirm that Harrison does have chronic brain damage; they indicate that he suffers from latent convulsive susceptibility and organic brain dysfunction. The psychiatrists agree that these conditions would give Harrison a lower threshold of excitability and would make him more impulsive in his actions under stressful situations. The doctors further have informed me that this would tend to make Harrison less able than a normal

**Executive Department**  
**State of California**

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individual to handle his emotions.

Another factor has strongly influenced me in this case, moreover. Several weeks ago, I received a letter from a man who served as a trial juror in Harrison's case. This juror informed me that it was his belief, after listening to the evidence in this case, that Harrison was subjected to a very stressful situation at the time of the breach of his relationship with Doris Martin, and that extreme emotional pressures then built up in him which finally exploded into violent action on the night of the murder. This juror informed me that had the trial jury had available to it the choice of imposing a sentence of life without possibility of parole on Harrison, he would not have voted for the death penalty in this case. The juror adds that several other members of the jury shared this view.

While it is true that the jury did not have available to it the choice of imposing against Harrison a sentence of life without possibility of parole, it is within my power to order such a sentence assessed against Mr. Harrison. I am convinced, moreover, that the best interests of justice would be served by imposing such a sentence against Harrison and thereby assure that he will not be released from prison on parole.

The warden and prison custodial staff have advised me that Harrison has adjusted well to prison discipline and that he would, in their opinion, constitute no serious custodial risk if released into the general prison population.

I have therefore concluded from all of these new facts and evidence which have been presented to me in the past few days and which were not available to either the trial court or jury that this is a proper case for executive clemency. I am convinced that these important facts, while they do not excuse his crime, would have been of material assistance to the trier of fact in determining the appropriateness of the penalty to be assessed against Harrison.

NOW, THEREFORE, in view of all the foregoing considerations, I, Edmund G. Brown, Governor of the State of California, pursuant to the authority vested in me by the Constitution and statutes of the State of California, do

Executive Department

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hereby grant to William Lee Harrison, No. A-73560, a  
commutation of sentence from death to life imprisonment  
without possibility of parole.

IN WITNESS WHEREOF, I have here-  
unto set my hand and caused  
the Great Seal of the State of  
California to be affixed this  
*Third* day of October, A.D.  
Nineteen hundred and sixty-  
three.

*Edmund G. Brown*  
Governor of California

ATTEST

*William M. Jordan*  
Secretary of State





June 5

PRIME RELEASE - J. - #727  
Governor Edmund G. Brown  
October 3, 1963

FOR IMMEDIATE RELEASE:

Governor Edmund G. Brown today commuted to life imprisonment without possibility of parole the death sentence of William Lee Harrison, who was scheduled to be executed on Tuesday, October 8, 1963, in San Quentin's gas chamber.

Harrison was convicted of first degree murder in Alameda County in 1962 for the slaying of Doris Ann Martin.

Governor Brown said that he commuted the death sentence on the basis of new psychiatric evidence which showed Harrison <sup>to</sup> be suffering from "chronic brain damage" indicating that he had latent convulsive susceptibility and organic brain damage dysfunction.

The governor also said that another factor which had strongly influenced him in granting the commutation was a letter which he had recently received from one of the trial jurors in Harrison's case. In this letter the juror stated that the jury had been forced to choose between a life sentence with possibility of parole, and the death penalty. The juror went on to say that they did not have available to them the choice of assessing against Mr. Harrison the penalty of life without possibility of parole. Had such a penalty been available, the juror informed the governor that he would not have voted for the death penalty.

The governor noted that Harrison had been placed under psychiatric observation as early as 1945 when he was in the Army, and that tests performed on him after his receipt on Condemned Row suggested the possible presence of organic brain damage. Further and more extensive psychiatric tests were then ordered by the governor. The governor said in issuing the commutation "These tests have now been completed, and the most recent neuropsychiatric report was received by me several days ago. These tests confirm that Harrison does have chronic brain damage; they indicate that he suffers from latent convulsive susceptibility and organic brain dysfunction. The psychiatrists agree that these conditions would give Harrison a lower threshold of excitability and would make him more impulsive in his actions under stress. The doctors further have informed me that this would tend to make Harrison less able than a normal individual to handle his emotions."

The governor went on to say: "I have therefore concluded from all of these new facts and evidence which have been presented to me in the past few days and which were not available to either the trial court or jury that this is a proper case for executive clemency. I am convinced that these important facts, while they do not excuse his crime, would have been of material assistance to the triers of fact in determining the appropriateness of the sentence."

## Memorandum

Honorable Glenn M. Anderson  
Acting Governor of California

Date : August 29, 1963

Subject: HARRISON, William Lee  
Execution Date: September 6, 1963

From : John S. McInerny  
Clemency Secretary

At the time of the clemency hearing in this case and in our subsequent brief discussion, you raised several questions which I stated I would check out for you.

I. The question of whether the car door was open or shut at the time of the murder seemed to bother you. I have rechecked the trial record, and three witnesses were asked about this subject on cross examination by the defense counsel. Mrs. Presley said the car door was not open (R.T. 78); Lloyd O'Connell and Anne Rogers testified the car door was open. (R.T. 110, 157).

I also called both the deputy district attorney and deputy public defender and asked for their recollections as to what the pictures introduced into evidence at the time of trial showed. The deputy district attorney said it was his recollection the picture showed the door was ajar, and by this he said he meant it was either partially closed so that it was almost shut or possibly was caught on the first catch as car doors sometimes are inclined to do before they are slammed. The public defender said that it was his recollection that one picture showed the door to be caught on the first catch but not entirely shut.

Because both men were almost identical in their choice of language, I did not check any further. The deputy district attorney also pointed out the pictures were taken some time after the murder and did not necessarily reflect the situation at the time of the crime. He did not discount the possibility that Davis might have reached the point of opening the car door, but he said he felt it did not alter the basic facts of the crime and Harrison's assault on Doris.

The public defender stated that he used the car door testimony as something to talk about in that it had a tendency to at least partially corroborate Harrison's story about opening the door for Doris. In all truth I must add that I do not feel that either counsel really placed too much importance on this fact.

II. I have attempted to check back on prior executions to determine how many wife-murderers have been executed or commuted in recent years. I have found 14 cases in the last 15 years, but I do not represent that I had the time to check out every case. Ten men who had killed their wives were executed; 2 men who killed divorced wives were executed; and 2 men who killed their common law wives were executed. (See attached list.)

The most recent wife-murderer case to come before the Governor was that of Veron Atchley. When Governor Brown originally considered this case on May 23, 1960, he notified Atchley's attorney that he was denying executive clemency. However, subsequent to that date, when Arthur Alarcon read the records in the case, he caused an EEG test to be run on Atchley. As a direct result thereof, it was discovered that Atchley had permanent brain damage and that when he was under the influence of alcohol, as he had been at the time of the murder, he had less control over his emotions. As can be seen, therefore, Atchley was commuted because of the brain damage and not the fact that he had murdered his wife. As a matter of fact, based on the facts of the crime, Governor Brown had denied clemency.

In a conversation with Dr. Schmidt of San Quentin last week, he informed me that Harrison's slightly abnormal EEG tracing is not analogous to that of Atchley's.

In December, 1960, Raymond Cartier, who had killed his wife after a session of drinking and arguing in a bar, was executed. This is the only wife-murderer case involving Governor Brown's administration I could locate.

However, several executions have involved murders of close relatives or in-laws. Cecil Ward, executed in June, 1959, killed his mother-in-law and sister-in-law, but he was apparently really intending to kill his wife.

There is also the earlier case of Oscar Hugo Brust who was convicted in Los Angeles County of murdering his estranged wife and step-son. He received first degree murder and was sentenced to death. However, prior to his scheduled execution date on May 24, 1957, he committed suicide on April 19, 1957.

I believe it is important to note that no one has been commuted simply because it was the murder of a wife involved. Most murders involving husbands or wives involve a killing aroused by strong passions in the heat of a highly personal relationship. The cases seldom result in death penalties because a reason of one ~~sort~~ or the other existed for the killing, and prosecutors don't ask for the death penalty. This does not mean, however, that death penalties are not given in such cases when the facts warrant it.

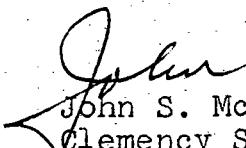
It must be remembered that this is not even a wife murder case. Harrison and Doris had been living in a common law relationship, but that relation had been non-existent for almost six weeks prior to the murder. There was no sudden quarrel that resulted in a killing in a burst of passion. Rather, Harrison after lying to his employer in order to get the day off, went to his mother-in-law's apartment with a knife concealed on his person and waited for his wife. His intentions were stated by him on repeated occasions after he had stabbed Doris - "I intended to kill her." The Supreme Court has held in a unanimous opinion that Harrison laid in wait for Doris with a knife in order to murder her. It is this fact along with the savage nature of the attack that makes this both a first degree murder case and also a death penalty case.

III. Further information regarding Harrison's 1954 arrest in San Antonio, Texas, has never been received. The police reports show that the complaining witness, Margaret Davis, reported that her "ex-boy friend one William Harrison (40) (Address) is alleged to have struck comp. with his fists also threatened her with a knife." The case was cleared by arrest and no charges were filed. It appears he might have posted and then forfeited \$25 bond. (See attached report by the Adult Authority)

IV. The Governor's clemency powers are basically unlimited, and he can issue commutations for any reason or no reason. However, the Constitution requires that once a year the Governor must report to the Legislature on the acts of executive clemency taken by him and his reasons therefor.

I have examined this file and am unable to recommend to you any reason for a commutation in this case. A trial jury has listened to the same evidence you have heard and read and they assessed the death penalty against Harrison. The trial judge not only refused to grant a new trial, he also specifically refused to reduce the penalty. The Supreme Court has unanimously affirmed the judgment of the lower court and held this to be a proper first degree murder case.

In closing, I can only repeat what I have previously stated. This was, from all the evidence adduced, a completely unprovoked attack. It was a planned crime. It was a vicious, savage and wanton attack on two helpless women. The defendant had never exhibited the slightest real remorse for his crime. He has a long record of prior assaultive behavior. I sincerely believe this is a proper death penalty case and that the exercise of executive clemency is not justified.

  
John S. McInerny  
Clemency Secretary

# Memorandum

Acting Governor Anderson

Date : August 22, 1963

Subject: HARRISON, William Lee

EXECUTION DATE: September 6,  
1963

John S. McInerny

From :

## RECOMMENDATION:

There is a lack of sufficient mitigating circumstances in this case to justify the exercise of the Governor's executive clemency powers.

Harrison committed a particularly wanton, brutal, and vicious murder, and the wounds he inflicted on Doris Martin were unusually excessive. He also attempted to similarly murder his mother-in-law. After the assault, he failed to evidence any remorse for his actions; rather, he indicated that he was glad that he had killed Doris. He has some past history of violent assaultive behaviour, and there was certainly no real provocation for his attack on Doris.

The case was well-tried by both the prosecution and defense, and the record makes it obvious that the jury very fully and carefully considered the facts before reaching their verdict. No basis has been discovered for recommending that their verdict be modified by the Governor.

Harrison has no prior felony convictions, and it would not, therefore, be necessary to secure the approval of a majority of the justices of the Supreme Court if you desired to exercise executive clemency.

## STATEMENT OF FACTS:

The defendant, William Lee Harrison, murdered Doris Ann Martin, in Berkeley, on December 11, 1961, by repeatedly stabbing and slashing her with a butcher knife. At the same time, he also attacked and stabbed Mrs. Leslie Presley, Doris' mother, but he did not succeed in killing her.

Harrison, a forty-nine year old man, had been living in a common-law relationship with Doris Martin, a twenty-four year old girl, for some three to five years prior to the murder. About a month or a month and a half before the killing, Mrs. Martin had moved

out of the apartment she had been sharing with Harrison in Berkeley and had moved into her mother's apartment with her. Also living with Doris and Mrs. Presley was Doris' nine year old son, Tony.

On the night of Monday, December 11, 1961, about six or six-thirty p.m., Doris returned home from her job as a domestic employee of Dr. Elizabeth Singer. Mrs. Presley and Tony were planning to attend a church service that evening, and Doris was going to drive them there. About 7:30 or 8:00 p. m., while they were getting dressed and preparing to leave, Harrison called the Presley apartment and asked to speak to Doris. (RT 36)

They talked briefly and Mrs. Presley heard Doris say to Harrison, "Bill, I'm not always threatening you and calling you names." (RT 37). Mrs. Presley then took the phone away from Doris and told Harrison she was tired of him "running over Doris" and that she was going to call the police and he would "get the same thing that you called her." The conversation between Harrison and Doris resumed briefly and then ended. A few minutes later, the defendant called Doris back and again spoke to her for a minute or two.

Shortly thereafter, Mrs. Presley, Doris and Tony left the apartment to go to church. Tony preceded the two women by a few minutes because he was going to go across the street to get some candy. However, as he came down the apartment stairs, he did not see Harrison. (RT 92) The two women followed shortly thereafter, and as Doris reached the sidewalk, with Mrs. Presley almost immediately behind her, the defendant stepped between them, pulled a knife from his waist and began to attack Doris. (RT 52, 56-57)

When Mrs. Presley went to the defense of her daughter, Harrison turned around and slashed her also and knocked her to the ground. Mrs. Presley arose and again went to help Doris and shouted at the defendant that he was killing Doris. Harrison turned around and said he was going to kill her, too (RT 59). He then struck Mrs. Presley a second time, knocked her down again, and resumed his attack on Doris, who had fallen to the ground.

The two women had been shouting and raising quite a fuss when the defendant began his attack on them, and their cries had aroused the neighbors, several of whom called the police. Mrs. Presley ran to the nearby apartment of Mr. and Mrs. Lloyd O'Connell and asked for help. Both of the O'Connells, and also Mr. and Mrs. Pumphrey, who were visiting with the O'Connells witnessed a portion of Harrison's attack on Doris. Mrs. O'Connell

told Harrison that he had killed Doris, and he said to her, "That's what I intended to do." (RT 115). Mrs. Pumphrey also heard this remark by Harrison. (RT 137).

Another neighbor, Mrs. Anne H. Rogers, saw Harrison on top of Doris and stabbing her (RT 154 - 156, 158.). She also heard Doris beg the defendant not to kill her, and she saw him sawing with the knife at Doris' neck (156-7).

Earlier in the evening, before the attack on Doris, Mrs. Rogers had gone to a nearby grocery store; and on her way back to her apartment, she had seen Harrison looking up intently at Mrs. Presley's apartment (RT 158-159). She also thought she had seen him even earlier than that on that same evening just sitting on a bus bench across from the apartment. (RT 160, 165)

Doris sustained some fourteen incised wounds from the defendant's attack, according to the autopsy surgeon. (RT 16). Two of these were major wounds - a deep stab wound in the chest and four inch laceration of the neck whereby he had literally cut her throat from one side to the other and had also cut her jugular vein (RT 17,26). Either of these knife wounds would probably have been fatal; and, as a matter of fact, Doris was pronounced dead on arrival at the hospital where she was taken immediately after the attack. (RT 224).

Mrs. Presley had sustained a deep laceration on her forehead and another near her left ear; her facial nerve on the left side had also been severed (RT 225-226).

After finishing his attack on Doris, the defendant walked away from the scene with the butcher knife in his hands (RT 124), and was arrested several blocks away by three Berkeley policemen. Harrison's clothes were quite bloody, and he himself was bleeding from some cuts on his hand. (RT 211) One of the officers told him Doris was dead, and the defendant said he had meant to kill her and he hoped he "got the other one too" (RT 237, 211, 218). He said he had accomplished his mission (RT 211) He also told the officers to go ahead and shoot him - what did he have to do in order to have them shoot him (RT 237, 244). He also told the officers Doris and her mother had been bothering him and he had gone to San Francisco to get away from them. (RT 237)

The officers then followed a trail of blood from where they had stopped Harrison back along the route he had taken, and they found the butcher knife he had used in the attack. (RT 245-6) He had shoved it into a bush beside the sidewalk. (RT 212)

On his way to the hospital, Harrison told the officer transporting him that Doris was his wife and that he hoped he had "fixed her good,"

and he also said he hoped he "did her right" and that he would be happy "if she is through" because that is all he wanted. (RT 267)

Because of the cuts on his hand, the defendant was taken by the police to the same hospital where Doris and Mrs. Presley had been taken for treatment. When Harrison saw Mrs. Presley, he said "you can't save her life" (RT 63).

While at the hospital, Harrison made several other remarks to the police officers there to the effect that he didn't want to say anything until he talked to an attorney. (RT 262, 270) But then he would volunteer other remarks about how Mrs. Presley was the "instigator" of the trouble (RT 262); and when he found out Doris was dead, he said the type of man that would do that "ought to be put away for life or put in the electric chair" (RT 262) He told another officer he would "feel fine" if Doris was dead, and that he didn't know what had instigated the trouble but that after it started he meant to kill her (RT 269). He also said he didn't know what he had used to assault her with, that he hoped he had killed her (RT 269). He made some further remarks to the officers asking them why would a man do something like that (RT 251).

#### DEFENSE TESTIMONY:

The defendant was the chief witness in his own defense. He neither admitted nor denied murdering Doris and assaulting Mrs. Presley; rather he claimed to have "blacked out" at the time.

According to Harrison, he was deeply in love with Doris and had lived in a common-law relationship with her for almost five years. He said that he had stayed out late one evening, and because of this they quarreled and Doris had then moved out and in with her mother (RT 207-303). Harrison claimed their parting was amiable, and that he had talked with and seen Doris on a number of occasions after their separation. (RT 319). He indicated that there had been a pretty good chance of their getting back together, and he placed a good deal of the blame on their breaking-up on Mrs. Presley, who did not approve of him or their relationship. (RT 312, 315).

Harrison claimed that he called Doris on the night of the murder and was having a peaceful and friendly discussion with her when Mrs. Presley broke into their conversation and began to berate him. (RT 332) He said Doris remonstrated with her mother for



saying such things to him (RT 333), and then told him to call her back because she couldn't talk then. He said that when he called her back she made arrangements with him to meet her later on that evening. (RT 333)

He said that he walked over to Mrs. Presley's apartment to meet Doris and saw her walking down the stairs toward her car with Mrs. Presley.

Just prior to this, Harrison said he had been in the liquor store across from the Presley apartment and had purchased a pack of cigarettes (RT 336). The clerk in the liquor store, however, said that he knew Harrison but that he had not been in the place at all that evening (RT 433).

Harrison said he started to open the door of Doris' car for her (RT 338), and that the next thing he knew he was attacked by Mrs. Presley and he then turned to defend himself (RT 338, 370). At this point Harrison said he went into "shock" and blacked out, and that the next thing he remembered was when Officer Rumford pointed a shotgun at him and threatened to "blow his brains out" (RT 341, 381). The officer denied ever saying such a thing to Harrison (RT 240).

Harrison said he remembered only certain things after that until two or three days later when he came out of his "shock" and found himself in jail. (RT 406-7). He didn't remember too much of what had happened at the hospital or the subsequent interrogation by the officers or the deputy district attorney (RT 382 - 389).

Harrison further claimed that he had spent the day of the crime in San Francisco, and then had driven over to Berkeley with friends, arriving there about 7 or 7:30 p.m. (RT 331, 354). His friends, the Gilmores, more or less corroborated this time schedule (RT 415, 423).

The ownership of the knife which Harrison used to murder Doris was the subject of considerable dispute in this case. Harrison denied owning the knife or bringing it with him to the scene of the crime (RT 334-5). As a matter of fact, Harrison said he was sure that he had never seen the knife before the trial began. (RT 379, 396) But he claimed he had seen that knife, or one similar to it previously in Mrs. Presley's apartment (RT 335). Mrs. Presley denied owning such a knife or ever having seen it before (RT 82), and Tony Martin, the grandson, also denied ever having seen such a knife in his grandmother's apartment (RT 99). Harrison strongly implied that Mrs. Presley had had the knife

with her when she attacked him and that she had tried to use it on him, which is how he cut his hand in taking it away from her. (RT 33809).

R. W. Thaler, the father of the woman for whom Doris worked, testified that he had sold the knife, which was eventually used as the murder weapon, to Doris early in 1961, along with a number of other items, and that Harrison had come by the next day and picked up all of the items which he had sold to her (RT 447-450). The knife in question was hand-made, and Mr. Thaler remembered it distinctly. (RT 450). Harrison had admitted picking up some items from Mr. Thaler but had denied the knife was among the items he had gotten.

There was also some testimony given about a statement taken from Harrison by a deputy district attorney after his arrest. In the statement Harrison refused to discuss the murder and claimed not to remember anything that had happened that night. He did say at one point, however, "What happens to a man when something like that happens, what snaps in the... ask the question I want, how come it couldn't have went to the other way. Why did it go that way?" (RT 469)

#### PENALTY PHASE:

##### Prosecution

During the penalty phase of the trial, the prosecution presented evidence of an incident which had occurred in March, 1952, and during which Harrison threatened several people with a shotgun.

In July, 1949, Harrison married Ruby Harrison. They lived in Berkeley, and Mrs. Harrison's son by a prior marriage lived with them. On March 4, 1952, the son indicated he and his wife were going to move out and into their own apartment, whereupon Harrison became enraged over what he considered inadequate notice of the move and went into the bedroom and secured a shotgun. He said he was going to "get" the son, but the young man had fled from the house by the time Harrison got the gun and went looking for him.

The police were summoned, and when Sergeant Gorman of the Berkeley Police Department arrived, he found one of his officers on the front stairs of the house, with his hands in the air, facing Harrison who had the shotgun more or less at the "port arms" position. Harrison ordered the officer off of the porch, but eventually he let Sgt. Gorman come into the house. Gorman asked

him what was going on, and Harrison said that he didn't know anything about threatening anybody, that he hadn't had any fights with anyone, and that he didn't know anything about a rifle. A warrant was obtained the next day by the police for Harrison's arrest on a charge of exhibiting and brandishing a weapon, and he was subsequently fined and served a jail sentence on the charge.

Mrs. Ruby Harrison also testified that on one other occasion during her marriage to Harrison, about a year after the shotgun incident, she and Harrison argued about some money he had given her and then wanted returned. After the argument, Harrison went to the house where she was working, hit her on the head, and then took her home and beat her some more.

Testimony was also presented by Mrs. Margaret Smith, who had been living with Harrison for about a year, during 1938-1939. She testified that Harrison had struck her in the eye on one occasion, and on another occasion he had stabbed her in the back near her kidney when he found her with two other men. She admitted, however, that she had cursed him just prior to the stabbing and had refused to go home with him.

There was also some testimony given about the parole practices of the Adult Authority regarding first degree murderers, and the fact that there were some 32 men then on parole in the area of Alameda and Contra Costa Counties who had been convicted of first degree murder, received life sentences, and then eventually placed on parole.

#### DEFENSE:

During the penalty phase, the defense presented the testimony of five people who had known Harrison - friends, his former minister, and sometime employer. They all stated that they had never known him to be a violent man. Additionally, one of the Alameda County Jail sergeants testified Harrison had been a quiet inmate since being confined to jail on this charge.

#### LEGAL HISTORY OF THE CASE:

The defendant murdered Doris Ann Martin on December 11, 1961, and he was arrested almost immediately thereafter that same evening.

On January 23, 1962, an Information was filed against Harrison by the District Attorney of Alameda County, charging him with

the murder of Doris and also with the felony of assaulting Mrs. Presley with a deadly weapon with intent to commit murder.

The defendant was arraigned on January 30, 1962, and pleaded not guilty to both counts in the information. Subsequently, on March 28, 1962, the defendant entered the additional pleas of "not guilty by reason of insanity," to both charges, and the trial court appointed two alienists to examine the defendant. The psychiatrists found him to be sane.

Trial by jury was commenced on June 18, 1962, at which time the defendant withdrew his prior plea of "not guilty by reason of insanity." On June 29, 1962, the jury returned verdicts finding Harrison guilty of both counts in the information and setting the degree in Count One as murder in the first degree. (The jury deliberated approximately four hours and seven minutes).

On July 2, 1963, further trial on the issue of penalty was begun, and on July 6, 1962, the jury returned a verdict assessing the death penalty against Harrison. (The jury deliberated about ten hours and twenty-five minutes).

On July 19, 1962, the defendant moved for a new trial, and on July 20th the court denied the motion for the new trial and also denied the defendant's requests for a reduction in the degree of the crime and the sentence adjudged by the jury.

Sentence of death was imposed by the trial court on July 24, 1962, and on May 21, 1963, the California Supreme Court unanimously affirmed the judgment and sentence imposed against the defendant.

On June 28, 1963, the trial court set September 6, 1963, as Harrison's execution date.

To the best of my knowledge, no further legal proceedings are being carried on at the present time.

#### LEGAL QUESTIONS:

A full and complete review of the trial transcripts in this case fails to reveal any legal grounds for the exercise of executive clemency on behalf of this defendant.

The defendant raised four major points on his automatic appeal, and all of them were rejected by the Supreme Court in a unanimous opinion written for the Court by Justice McComb.

1. The defendant contended the trial court committed prejudicial error by admitting into evidence seven colored transparencies of the wounds in the body of Doris Martin.

The Supreme Court held that the question of whether the probative

value of such pictures outweighed their possible prejudicial effect was a question lying within the discretion of the trial court, and that in this case the record clearly supported the decision of the trial court to admit the pictures into evidence under proper instruction given by him to the jury.

2. The defendant also contended that the trial court erred prejudicially by allowing the prosecution to present in rebuttal the evidence of Mr. Thaler as to the ownership of the knife used in the murder.

The Supreme Court held that the trial court properly ruled that the evidence complained of could be presented in rebuttal to the testimony given by the defendant during his portion of the case, and that no error was committed thereby.

3. The defendant also contended that the trial court improperly instructed the jury on the doctrine of "lying in wait."

The Supreme Court held that the evidence supported the prosecution's contention that the defendant had laid in wait in order to murder Doris, and that the trial court properly and correctly instructed the jury on this issue.

4. The defendant also contended that the trial court committed prejudicial error by refusing to give certain instructions proposed by him during the penalty phase of the trial.

The Supreme Court held that the trial court had fully and correctly instructed the jury on the applicable law, and that the instructions proposed by the defendant on the subject were incorrect.

#### PRIOR CRIMINAL RECORD:

The defendant has no prior felony convictions; however, he has an arrest and conviction record dating back to 1936. He was arrested on March 21, 1936, in Oakland, California, for assault with a deadly weapon; but on April 8, 1936, the assault with a deadly weapon charge was dismissed on motion of the District Attorney and the defendant thereupon pleaded guilty to a charge of battery. Judgment was suspended in the case. The incident involved Harrison inflicting cuts on two men with a pocket knife. The men had jostled Harrison as he was crossing the street.

On January 25, 1940, he was sentenced to a year in the Alameda County Jail for assault with a deadly weapon. This charge involved Harrison's stabbing his girl friend Marguerite Baltazer with a knife.

On April 8, 1952, he was sentenced to 50 days in the Alameda County Jail in lieu of a \$500 fine on a charge of brandishing a firearm (shotgun) at a police officer. (See the previous testimony regarding these two incidents given during the penalty phase of the trial.)

On June 20, 1957, he was sentenced to four days in the Alameda County Jail for drunkenness.

Harrison also shows an arrest on September 18, 1954, for a drunken aggravated assault on a female in San Antonio, Texas, but no disposition on this charge is shown.

Moreover, during his military service from February, 1941, to November, 1945, he was convicted by Army courts-martial on seven occasions - four times for AWOL, once for desertion, and twice for disobeying the lawful order of an officer and non-commissioned officer.

MENTAL CONDITION:

Harrison is sane and has an I. Q. of 90. He is in the lower limit of the Average intellectual classification.

The Neuropsychiatric Committee characterizes Harrison as "Sociopathic Personality, Antisocial Type in a basic Schizoid Personality."

Psychiatric examinations performed on him after the crime and prior to the trial also resulted in opinions by the psychiatrists that he was sane.

A psychiatric report prepared by the Army on Harrison in 1945 characterized him as "Psychopathic Personality, Emotional instability." Dr. Schmidt of the San Quentin neuropsychiatric staff informs me that the term "psychopathic personality" used to be employed to designate what is now referred to as "sociopathic personality."

It should be noted also that Harrison's twenty-day psychiatric report shows a mildly abnormal EEG tracing. Dr. Schmidt has informed me that this is not a severe abnormality, and that it is located only in the frontal areas of the brain. He feels that it might be a mitigating factor in explaining Harrison's emotionality and emotional instability and give him slightly less emotional control. However, Dr. Schmidt is still of the opinion that Harrison is neither insane nor mentally ill, and he emphasized that this was only a minor abnormality in the reading.

SOCIAL EVALUATION:

The prison psychological evaluation notes that Harrison was "soft-spoken, mild-mannered and courteous" during his interview, but that he was mildly depressed and quite bitter and cynical over his conviction.

The report classifies him as "highly psychoneurotic and emotionally unstable individual, whose ideation is rather autistic and schizoid." It also notes that he has "marked sociopathic attitudes."

The condemned row officer reports that Harrison has become increasingly sullen and argumentative in his relations with the other inmates and that he recently was involved in an altercation with another condemned row prisoner.

BIOGRAPHICAL MATERIAL:

The defendant, William Lee Harrison, a forty-nine year old Negro, was born in San Antonio, Texas, on January 7, 1914. He has an older brother and a younger married sister; another brother died at age two. His father was a railroad fireman and his mother was a school teacher, and they were a fairly middle-class family. Both parents are now dead - the father in 1930 and his mother in 1958. As a child, Harrison had an extremely bad temper and was given to frequent violent temper tantrums.

Harrison claims to have finished the eleventh grade before leaving school in 1929. Other records indicate, however, he attended school until 1930, and that he was in the 9th grade at the time, but that he was withdrawn from school because he would not submit to school discipline. There are other records which would indicate that he completed four years of high school at age 20, but this does not agree with all of the other information we have.

He married Dorothy Grey, a pregnant fourteen year old girl, shortly after leaving school, but this marriage was not successful. In 1949, he married Ruby Harrison, but she got a final divorce degree from him in 1954.

Harrison was in the Army from February, 1941, until November, 1945. He was discharged as a private, although he had been a

sergeant at one time. He served overseas for about eight months in the Pacific Theatre.

Some years ago he admitted to the occasional use of marijuana and to "sniffing" heroin; the record contains no evidence of recent use of either.

Harrison has held a number of jobs during his lifetime. His most recent employment was as an animal handler for the experimental surgery laboratory at Children's Hospital in San Francisco. He held this job for about six weeks immediately prior to the murder. Before that he had worked as a janitor, waiter, mechanic, merchant seaman, and bell-hop. He has lived in the Oakland - Berkeley area, off and on, since 1933.

#### MISCELLANEOUS COMMENTS

The trial judge, the Honorable W. J. McGuiness, feels that "the verdict of the jury reflects the judgment and conscience of those persons who were charged to act conscientiously upon the facts." He further feels the verdict of the jury was just, and that the defendant was well represented by counsel during a well-conducted trial.

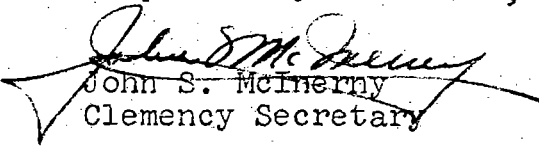
The deputy district attorney who tried the case feels that the verdict and sentence are justified by the evidence in the case, and that the jury properly returned the death penalty against the defendant.

The police officials feel that the murder of Doris Martin was "one of the most vicious and brutal offenses" in the history of their department, and that capital punishment is warranted in this case.

The public defender who tried the case and represented the defendant on his appeal feels the death penalty is not warranted in this case and that it is "an excessive penalty for a homicide arising out of an emotional domestic relationship."

Mr. Harrison feels he didn't get a fair trial; that he was not adequately represented; that the verdict is the result of racial prejudice and that it is excessive in this case.

Respectfully submitted,

  
John S. McInerney  
Clemency Secretary

JSM:js



**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 80: Materials Relating to the Clemency of  
Norman Arthur Whitehorn (December 2, 1963)**

## Executive Department

State of California

COMMUTATION OF SENTENCE  
NORMAN ARTHUR WHITEHORN

Norman Arthur Whitehorn was convicted of the crime of first degree murder on September 8, 1962, by the Superior Court of the State of California in and for the County of Los Angeles. On September 24, 1962, the jury fixed the penalty for the crime at death, and on September 28, 1962, the trial court sentenced Whitehorn to be executed in accordance with applicable law.

Pursuant to the mandate of Article VII of the California Constitution and following my policy in all death penalty cases, I have carefully reviewed this case to determine if any cause existed for the exercise of executive clemency. This examination included a study of the transcript of the trial on the question of guilt and also the transcript on the proceedings as to the appropriate penalty to be assessed, the reports of the Adult Authority investigation of this case, the report of the neuropsychiatric committee at San Quentin, the reports of the Warden and the custodial staff on condemned row, and the opinion of the California Supreme Court.

The evidence produced at the time of trial indicated that the victim, Mrs. Angela Gums, was strangled to death by Charles Henry Hummel, Whitehorn's co-defendant, on April 22, 1962, after she had been raped twice by Whitehorn. At the trial, Whitehorn claimed the acts of sexual intercourse had been voluntarily consented to by Mrs. Gums and that he had had nothing to do with her murder. The co-defendant, Hummel, admitted that he had been the one who had actually killed Mrs. Gums.

In spite of these facts, the jury returned the death penalty against Whitehorn and gave Hummel a sentence of life imprisonment.

I am keenly aware of the necessity of upholding and preserving the administration of justice and the decisions of our trial courts and juries. I am also aware of the great respect which must be accorded to these judgments. It remains, however, my sworn Constitutional duty to review these cases in order to determine if they merit the exercise of executive clemency.

In my review of this case I have been deeply impressed with the disparity of punishments assessed against these two men. The actual killer of Mrs. Gums has been given life imprisonment whereas Whitehorn has received the death penalty.

It should be clearly understood that I have no question of Whitehorn's legal guilt for the crime of which he now stands convicted. But the fact of his legal guilt and the degree of his direct participation in this crime are not necessarily synonymous, and these factors have weighed heavily in my decision in this case. I cannot reconcile myself that the difference in the penalties assessed against these two men is really justified in view of the evidence

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that has been presented to me.

It was pointed out to the jury in this case that they were limited to a choice of imposing life imprisonment or the death penalty on this defendant; and it was further specifically pointed out to them that if they gave a sentence of life imprisonment to Whitehorn, he would become eligible for parole at the end of seven calendar years of his prison sentence.

It is true, of course, that the jury in this case could not legally impose a sentence of life without possibility of parole on Whitehorn. The imposition of such a sentence is, however, within my power, and I am convinced that the best interests of justice would be served by assessing such a sentence against Whitehorn in this case.

The imposition of a sentence of life without possibility of parole on Whitehorn will serve to adequately protect society and will provide that he will never be eligible for release on parole.

I am impressed with the fact that Whitehorn has presented no custodial problems during his past period of prison incarceration, and also by the fact that he has presented no such problems during his current stay on condemned row.

I have also been strongly influenced in my decision in this matter by a letter I have recently received from the senior deputy district attorney who assisted in the prosecution of this case. He has stated that while he declines to make a specific recommendation to me as to whether or not clemency should be granted, it was his personal opinion that the ends of justice would be served by a commutation of Whitehorn's sentence to life imprisonment without possibility of parole. This statement by such an experienced prosecutor is entitled to great weight by me.

Because Whitehorn has twice been convicted of felonies, I referred this matter to the California Supreme Court for their recommendation pursuant to Article VII, section 1, of the California Constitution. On December 2, 1963, Chief Justice Phil S. Gibson advised me that a majority of the Justices of the Supreme Court recommended a commutation of Whitehorn's sentence to imprisonment for life without possibility of parole.

In view of all of the foregoing facts, I have concluded that the interests of equal justice would best be served in this case by granting to Whitehorn a limited commutation of his present death penalty sentence to one of life without possibility of parole.

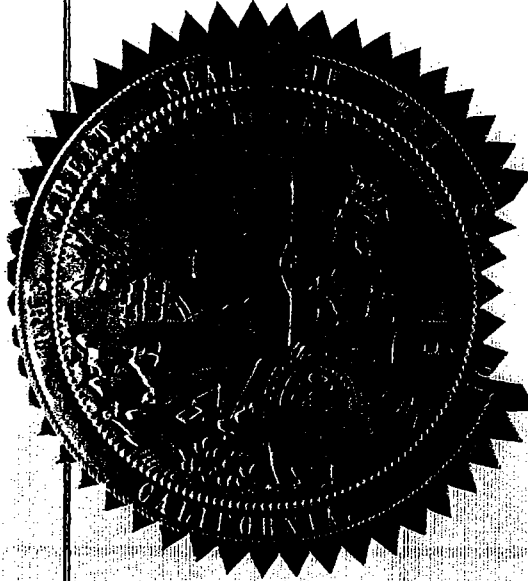
NOW, THEREFORE, I, Edmund G. Brown, Governor of the State of California, pursuant to the authority vested in me by

Executive Department

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the Constitution and statutes of the State of California, do hereby grant to Norman Arthur Whitehorn, San Quentin Prison No. A-44433A a commutation of sentence from death to life imprisonment without possibility of parole.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this Second day of December, A.D. Nineteen Hundred and Sixty-three.

*Edmund G. Brown*  
Governor of California

ATTEST

*Freeman M. Johnson*  
Secretary of State

By *Robert L. Miller*  
Assistant Secretary of State

JMG

PRESS RELEASE - JB - #855  
Governor Edmund G. Brown  
December 2, 1963

FOR IMMEDIATE RELEASE:

Governor Edmund G. Brown announced today that he has granted a limited commutation to a life sentence without possibility of parole in the case of Norman Arthur Whitehorn, 26. The governor acted after receiving the favorable recommendation of a majority of the justices of the California Supreme Court advising that the sentence of Whitehorn be commuted to life without possibility of parole.

Whitehorn was to have been executed tomorrow. He was convicted in Los Angeles in 1962, along with a co-defendant, Charles Henry Hummel, of the rape-murder of Mrs. Angela Gums.

The governor pointed out in issuing his commutation that whereas Hummel was the actual killer of Mrs. Gums and had been given life imprisonment, the jury had assessed the death penalty against Whitehorn. This disparity of punishments weighed heavily in the governor's decision.

The governor also pointed out that he had been sent a letter by the senior deputy district attorney who had prosecuted this case in which the prosecutor had stated to the governor that it was his personal opinion that the ends of justice would be served by a commutation of Whitehorn's sentence to life imprisonment without possibility of parole.

\* \* \* \* \*

## Memorandum

: Governor Brown

Date : November 26, 1963

Subject: WHITEHORN, Norman  
Arthur - Condemned  
Execution Date: December 3, 1963

From : John S. McInerny

### RECOMMENDATION:

There is insufficient evidence of mitigating circumstances in this case to justify the exercise of executive clemency.

The murder of Mrs. Gums was a vicious and unprovoked killing which occurred during the course of her being raped twice by the defendant. The facts also indicate the killing was premeditated.

Although the evidence in this regard is not entirely positive, it seems clear that the actual murder in this case was committed by Charles Hummel, Whitehorn's co-defendant. In spite of this fact, the trial jury saw fit to give Hummel a life sentence and to assess the death penalty against Whitehorn. No new facts have been presented to you since that determination which would justify overturning the verdict of the jury and trial court.

The disparity of sentence is explainable by the fact of Whitehorn's prior rape and kidnapping conviction, and also the evidence of his other assaultive acts against women. Moreover, the age of Hummel (18) was undoubtedly a strong factor in his behalf with the jury. In addition, it would appear that the murder of Mrs. Gums was premeditated by both men in order to prevent her reporting the rape to the police. Had such a report been turned in against Whitehorn, since he was on parole at the time, he faced a long prison sentence. He, therefore, had a particularly strong motive for disposing of Mrs. Gums.

Whitehorn has twice been convicted of a felony. It will, therefore, be necessary to secure Supreme Court approval if you desire to grant him executive clemency.

### STATEMENT OF FACTS:

During the early morning hours of Easter Sunday, April 22, 1962, the defendant Whitehorn and his co-defendant Hummel, took Mrs. Gums (Mrs. Angela Gums), a 37 year old woman they had just met in a Hollywood night club, up into the hills above Los Angeles. There Mrs. Gums was twice forcibly raped by Whitehorn and then murdered. Her body was then tossed into a ravine, and the two men left the area.

Four days later, on April 26th, Hummel, who was an 18 year old Marine stationed on the desert near Twenty-Nine Palms, California, told the base chaplain about the murder. The chaplain then took him in to the provost marshal's office on the base, where Hummel repeated his story to the investigators there.

Hummel, after being informed of his legal rights told the Marine Corps investigators that on the night of Saturday, April 21st, he had met Whitehorn with whom he had previously been casually acquainted, at the Hollywood USO, and that after visiting several bars and restaurants in Los Angeles, they had ended up at a Hollywood night club called "P.J.'s"

At this place they met the victim, Mrs. Gums, and had a casual conversation with her. When she indicated she was going home and was going to call a cab, Whitehorn offered to drive her home in his car. Mrs. Gums consented, but instead of driving her home, Whitehorn and Hummel drove her up into the hills. There Whitehorn forced her to submit to an act of intercourse. They then drove to another spot where Whitehorn ripped off her clothes and raped her again.

Hummel said the woman then climbed into the back seat where he grabbed her and held her while Whitehorn garroted her with his tie. Then they drove to another spot where they threw the body over a barbed wire fence and into some tall weeds. Hummel said that Whitehorn asked him if he was scared and then said "be like me, don't let it bother you." Hummel claimed that the defendant then drove along the highway, tearing up Mrs. Gum's clothes, and throwing them away.

The Marine Corps investigators informed the Los Angeles Sheriff's office of the story related to them by Hummel, and then drove him into town and turned him over to the sheriff's deputies about 8:00 p.m. on April 26th.

Shortly after he was turned over to the Sheriff's deputies, Hummel gave a statement to them. First, he identified the victim by name and he also identified a picture of the defendant, Whitehorn. He then repeated, in substance, his earlier statement regarding the crimes. He said that when they got up in the hills, Whitehorn parked the car and told Mrs. Gums he was going to have intercourse with her. She tried to joke him out of it and told him he was drunk, but Whitehorn told her not to fight him or he would hurt her. (RT 630). Hummel said that Mrs. Gums began to cry and said that Whitehorn would regret this the rest of his life. He repeated his story that Whitehorn had actually strangled Mrs. Gums with a tie while Hummel held her (RT 631).

Hummel also said that after disposing of Mrs. Gums' body and her clothes the two men spent the next day at a Long Beach amusement park and Whitehorn's apartment, and that he then returned to his base late Sunday night.

Hummel then took the investigators out to the spot where the body had been deposited. There they found Mrs. Gums' body lying in a clump of weeds just off the road. Shortly thereafter, Hummel directed the officers to the spot where the second act of intercourse and the strangulation had taken place.

A subsequent autopsy on Mrs. Gums showed she had died "due to asphyxia due to strangulation of neck with probable ligature." (RT 467). Her body disclosed spermatozoa in her vagina and a number of ante-mortem bruises and scratches on her abdomen, breasts, and arms. Some of these bruises had been inflicted on her just shortly before her death. (RT 483.)

Whitehorn was arrested about 11:30 p.m. on April 26, 1962. Shortly after he was arrested he told one of the investigators from the Marine Corps that Hummel was not telling the truth and that he had not disposed of Mrs. Gums clothing in the manner Hummel had stated.

About 5:00 a.m. on the morning of April 27th, the officers took another statement from Whitehorn. At first Whitehorn claimed he had worked until late Saturday night and then had gone straight home to bed. Then, however, he said he had been out with a Marine that evening. When the officers asked him if he had picked up a lady and had sexual intercourse with her, Whitehorn said he didn't remember. (RT 699).

The officers told him what Hummel had previously related to them and said they would like to hear his side of the story. Whitehorn said he didn't have any side of the story and that no matter what it was he was "gone" anyway. He insisted, however, that he had not killed Mrs. Gums. (RT 701).

About 6:00 a.m. on the morning of April 27th, the officers brought Hummel and Whitehorn into a room together and took another statement from them. Hummel repeated substantially the same statement he had told the officers earlier about having taken Mrs. Gums up into the hills where Whitehorn raped her after threatening to hurt her. (RT 710-711). Hummel again said that Whitehorn ripped Mrs. Gums' clothes off of her and had a second act of intercourse, and that Whitehorn had subsequently strangled her while Hummel held her arms to her body. (RT 713-714).



During the time that Hummel was making the statement, Whitehorn attempted to interrupt on several occasions to indicate he disagreed with a particular point Hummel was making; these matters were largely minor in nature, however, and the officers told Whitehorn to let Hummel finish and then he would have a chance.

At the conclusion of Hummel's statement, the officers asked Whitehorn if Hummel had told them the truth, and Whitehorn said, "I don't care to venture to say whether or not he's told the truth until I think about it for a while." (RT 735). When questioned further about this, Whitehorn told the officers that they knew "where I'm going" ... "I am to be eliminated from society." (RT 735.) He went on to say that regardless of whether or not the thing had happened the way Hummel described, the story told by him was enough to eliminate Whitehorn from society. Whitehorn indicated he was trying to decide if he should implicate Hummel. The officers once again explained they were trying to give him a chance to correct any errors in Hummel's story. Whitehorn repeated that he had not killed anyone, but he said this whole thing probably would not have happened if Hummel had not met him that night. (RT 744; 749). He repeated several more times that he had not killed anyone.

Whitehorn then agreed to show the officers where Mrs. Gums' clothing had been hidden. On the way to the spot he said that it was a terrible thing to see a woman die but he had not killed her. (RT 589). He said he had a "sex problem" but no desire to kill her. Whitehorn told the officers a story similar to the one previously told by Hummel except that he claimed Hummel had also raped Mrs. Gums and that Hummel had strangled Mrs. Gums. He also stated they had buried Mrs. Gums' coat and purse in the sand at the beach and had taken the money from her purse.

He then directed the police to the spot where he said the strangulation and rape had occurred. He also showed them where he and Hummel had disposed of the body. He took them out to the beach and showed them where he had buried the clothing in the sand.

About noon, on April 27th, another statement was taken from Whitehorn. In it he described his bar-hopping tour with Hummel on the night of the murder and their meeting with Mrs. Gums. He said that they took her to a spot in the hills above Los Angeles, and both of them had intercourse with her there. When asked if his act of intercourse with her was free and voluntary on her part, Whitehorn said, "I wouldn't say so, no", (RT 772) but he also said she didn't resist "to any great extent." He also said that she "very possibly" was in fear at that time.

Whitehorn said they then took their victim to the second spot where he tore off Mrs. Gums' clothes and had another act of sexual intercourse with her. (RT 775). Whitehorn claimed that Hummel then strangled Mrs. Gums while he held her on his lap (RT 776). He said that later on as they drove away from the murder spot, Mrs. Gums began to breath and groan, and Hummel then climbed into the back seat and finished strangling her. When it was called to his attention that Hummel had said earlier that Whitehorn had killed Mrs. Gums, Whitehorn said the statement was false. (RT 805).

The officers then took another statement from Hummel. This occurred almost immediately after they had finished taking the prior statement from Whitehorn. The same basic information regarding the meeting with Mrs. Gums and the events leading up to her death were described by Hummel. He made several minor changes in his story, however.

Hummel now stated that he had first run into Whitehorn on Friday night rather than Saturday, but he said the meeting with Mrs. Gums still occurred on Saturday evening after they had spent some time visiting various bars and restaurants. He further said they started to drive her home but drove past her house and took her up into the hills on the pretext they were going to show her Whitehorn's home.

Hummel said that after they got to a relatively deserted spot in the hills, Whitehorn told the victim he was going to have intercourse with her and she tried to talk him out of it. He said that Whitehorn then grabbed her by the hair and pulled her down on the seat and raped her. (RT 828). He repeated that after it was over Mrs. Gums told Whitehorn he was going to be sorry for this for the rest of his life. (RT 828).

Hummel then described their drive to the second spot where Whitehorn ripped off the victim's clothes and raped her again over her protests. (RT 831-832). He said she then jumped into the back seat with him where he grabbed and held her while Whitehorn took off his tie and strangled her. (RT 834). Hummel again denied that he had had an act of sexual intercourse with Mrs. Gums. (RT 853).

On April 30, 1962, the two men were brought into justice court and arraigned on the charges.

The next day, May 1, 1962, Hummel sent word to the police officers that he wished to speak to them. When the officers went to see him, he told them he wanted to change his statement because he had actually done the strangling and Whitehorn had held the victim. (RT 889).

Another statement was then taken from Hummel. In it, Hummel said the earlier statements he had given the police were true

except that he had strangled Mrs. Gums with a necktie while Whitehorn held her. (RT 893). He said Whitehorn had handed the tie to him while he was holding Mrs. Gums, but he did not tell him to strangle the victim. Hummel said that after he had strangled Mrs. Gums he released the tie, but when she groaned and made noises, Whitehorn applied pressure to the tie until she became silent. (RT 895). Hummel also admitted at this time that it was he, rather than Whitehorn, who had thrown Mrs. Gums' clothing out onto the highway as they drove along. He said he had changed his story due to an attack of conscience. He still denied, however, that he had had an act of intercourse with Mrs. Gums. (RT 903).

Hummel also said that just before he strangled Mrs. Gums, she had been naked and had complained about being cold. She asked for her fur stole to wear, and Whitehorn had refused and said "you're not going to need it." (RT 905).

On August 9, 1962, again at the request of Hummel, the officers went back up to the jail to talk to him. Hummel told the officers at that time he would now "like to tell the complete truth in this case." When they asked him what he was talking about, he said that Whitehorn "had nothing to do with the strangling of this woman, that he was just along, that he participated in no way". (RT 915).

At first the officers refused to take another statement from Hummel in view of Whitehorn's previous admissions of complicity, but later that afternoon they did return and took another statement from Hummel. He began this statement by saying, in effect, he wished to make a clean breast of the whole thing.

Hummel said that right after they had picked Mrs. Gums up at P.J.'s and driven past her house, they stopped at a service station and both men got out of the car. Hummel said that Whitehorn asked him if he wanted to take Mrs. Gums some place so they could have intercourse with her, and he said the defendant added that "if she went out she wasn't coming back". (RT 959). Hummel said he replied "let's go".

Hummel further told the officers that after Whitehorn had raped Mrs. Gums for the first time and while they were driving to the second spot, he (Hummel) kept making motions with his thumb across his throat to Whitehorn reminding him that they should kill her as they had previously agreed. (RT 960).

He also said that after Whitehorn had raped the victim the first time, he invited Hummel to do likewise, but Hummel said he did not actually have an act of intercourse with her. He said he just laid down on top of her and whispered to her of his fear of Whitehorn (RT 962). But he also said he

actually strangled Mrs. Gums. (RT 961). He said he did it out of fear - fear of being turned in by Mrs. Gums and also fear of what Whitehorn would do to him if he didn't do it. (RT 965). He further said that it was he, rather than Whitehorn, who had told Mrs. Gums when she asked for her stole that she wasn't going to need it. (RT 977).

PRIOR OFFENSE:

Testimony was also presented by the prosecution of the circumstances surrounding the defendant's rape of Linda Miller in 1957.

On August 16, 1957, Miss Miller and a girl friend were walking down a street in San Bernardino during the late evening hours around midnight. Miss Miller's car had developed battery trouble and they were going to call for assistance.

Whitehorn and a friend drove by, saw the girls, learned of the trouble, and offered to give them a push. After they had started the car and driven it to the house of Miss Miller's friend, the two men offered to buy the two girls a coke. Instead, they started to drive them away from the downtown area. On the way, the defendant drove at high speeds in order to avoid a policeman who had passed them. Linda's girl friend became frightened and jumped out of the car while it was moving.

The defendant then drove to a orange grove outside of town. Linda had asked to be let out of the car, but the defendant told her she would have to "put out or get out." She offered to get out, but Whitehorn wouldn't stop the car and it was going too fast for her to jump. At one point she did actually try to jump out of the car, but the two men grabbed her arm and kept her in the car. She noticed at that time that Whitehorn had an open knife on the front seat beside her.

At the orange grove, Whitehorn ripped off Linda's bra and forcibly removed her panties and skirt. Whitehorn then raped her. He also hit her several times. After completing the first rape, Whitehorn told his friend to get out of the car, and he then forced Linda into the back seat where he raped her again. (RT 1089). At this point, they heard someone driving up, so they left the area and went to another nearby spot. Whitehorn asked his friend if he wanted to rape Linda also, but the friend refused, so they then took Linda back to within a few blocks of her friend's home and let her out. (RT 1091).

DEFENSE TESTIMONY:

The defendant Whitehorn testified as a witness in his own behalf. His description of the events leading up to the meeting with Mrs. Gums was substantially as has been set out

before. He denied, however, that he had held any conversation with Hummel at the service station near Mrs. Gums' house about having intercourse with her or saying that if she went up there with them she would not be coming back. (RT 1452).

He admitted having two acts of intercourse with Mrs. Gums, but he claimed they were freely and voluntarily entered into by her with him. (RT 1459). He also admitted telling the police officer on a prior occasion that the acts were not exactly free and voluntary, but he said that he meant by this statement that Mrs. Gums wasn't too happy about having intercourse with him while Hummel was in the car with them.

Whitehorn said that in between the time of the two acts of intercourse he had with Mrs. Gums, he saw Hummel lying on top of Mrs. Gums, and that he had assumed an act of intercourse was taking place, but he couldn't really be sure.

Whitehorn also admitted telling the officers he had torn Mrs. Gums' clothes off, but he said he simply meant by that that they had been taken off hurriedly in the heat of passion. (RT 1466-1467).

Whitehorn testified that after the second act of intercourse, Mrs. Gums was sitting naked on his lap and they were talking peacefully when she suddenly threw her hands up in the air and he thought she and Hummel were fighting. Then he said he realized that Hummel was strangling her but by that time it was too late to stop him and help her. (RT 1469-70).

He said that when he realized she was dead he helped dispose of her body because he knew he was on parole at the time and he feared going back to prison. (RT 1472).

On cross-examination, he again denied that any conversation had taken place at the service station between Hummel and himself regarding the rape or killing of Mrs. Gums. (RT 1561). He admitted that he saw Hummel make a motion with his hand across his throat while they were riding in the car with Mrs. Gums, but he said he didn't attach any particular significance to it at the time. He said that later, when the officers were questioning him, he decided that Hummel had meant by the gesture that he wanted to dispose of Mrs. Gums. (RT 1583).

He also denied telling Mrs. Gums that she would have no need for her fur stole when she was naked in the car, and he added that he didn't remember Hummel making any such statement either. (RT 1596).

Whitehorn admitted that he lied to the officers when he was first arrested regarding his activities on the night of the murder. (RT 1614). He said he didn't want to answer any

questions at that time until he knew what was going on and what they were questioning him about. (RT 1614). He further admitted, however, the officers had told him at that time they wanted to question him about the murder. (RT 1615).

In connection with his prior conviction for the rape of Linda Miller, Whitehorn testified he was innocent of the charge. He said that when they parked in the orange grove outside of San Bernardino in 1957, Miss Miller had willingly consented to engage in two separate acts of sexual intercourse with him. (RT 1523).

Whitehorn said that in spite of the fact Miss Miller voluntarily consented to the acts of intercourse, he became concerned that she would claim that he had raped her in order to explain to her boy friend why she was out so late at night. It was for this reason Whitehorn testified, that he had let her out of the car a few blocks from her girl friend's house and wouldn't let her see the license plates on his car. (RT 1519-1521).

He also admitted that he had originally offered to plead guilty to raping Linda, but he claimed that he made this offer because he was being beaten up by other prisoners in the jail and he just wanted to get out of there.

The defendant Whitehorn also presented the testimony of several witnesses who said that Mrs. Gums had a bad reputation for chastity in the neighborhood. One of these persons so testifying was presently in jail under a felony conviction and had been a friend of Mr. Whitehorn's since 1960.

The co-defendant Hummel, also testified in his own behalf. He described again his activities for the day of the murder and the circumstances surrounding their meeting Mrs. Gums at the Hollywood night club. He denied, however, as he had previously told the officers on August 9th, that when they stopped at the service station near Mrs. Gums' house that he and Whitehorn had discussed raping Mrs. Gums and that Whitehorn had said if she went out there she was never coming back. (RT 1209-1210).

According to Hummel, Whitehorn had two acts of sexual intercourse with Mrs. Gums, but they were voluntary on her part. He said that when they stopped the car for the second time, he stretched out on the front seat while Mrs. Gums and Whitehorn climbed over into the back seat and the next thing he knew he was removing the necktie from around her throat. (RT 1227). He said he suddenly became aware he was strangling Mrs. Gums. He denied having any intention to kill the victim. He also denied telling Mrs. Gums, when she asked for her fur stole, that she wouldn't need it. (RT 1294).

PENALTY PHASE:

During the penalty phase of the defendant's trial, the prosecution presented evidence of several other assaults committed by Whitehorn against other girls and women.

The first of these occurred on August 16, 1957, and involved a girl named Leota Hackney. This incident happened earlier on the same evening upon which Whitehorn eventually raped Linda Miller.

Miss Hackney, who was then 15 years old, and a girl friend met Whitehorn and a friend of his at the Orange Show in San Bernardino about 8:00 p.m. on the night of August 16th. The quartet drove to Palm Springs and then started back to San Bernardino. The defendant and Miss Hackney were seated in the back seat of defendant's car and were necking while their two friends rode in the front seat of the car and were driving it home.

Suddenly, the defendant pushed Miss Hackney down on the seat of the car and started to try and remove her capri pants. She protested and asked him to stop it, but he continued to hold her down and try to remove her clothing. In an attempt to make him stop, Miss Hackney scratched his back with her fingernails. The girl finally managed to attract the attention of her friend in the front seat, and the two people then stopped the car. Whitehorn then ceased his attack on Miss Hackney.

The defendant thereupon said that he would drive the car back to town, but that "no bitch that does that to my back is going to ride in my car." (RT 1831). The defendant then put the two girls out of the car and left them on the highway in the desert. He and his friend drove back to San Bernardino and the girls caught a ride with a passing motorist.

The prosecution also offered testimony regarding the defendant's alleged rape of Miss Jacqueline Adams on November 12, 1961. This was the offense for which the defendant had previously been tried and acquitted.

Miss Adams testified she had gone to a Hollywood bar with two girl friends on the night in question to watch a dance contest. While there, she danced several times with the defendant Whitehorn, and eventually he told her he was not feeling well due to having had too much to drink and he asked her to drive him in his car to a restaurant to get something to eat.

Miss Adams agreed, but on the way to the restaurant the car developed motor trouble. They finally succeeded in starting the car, whereupon the defendant drove her up into the hills

and forced her to submit to an act of sexual intercourse. He told her that if she didn't want to get hurt she had better do as he said. (RT 1864).

The girl testified that as they were driving away from the area, Whitehorn said he was going to have to turn himself into the police because of what he had done. She said that she was afraid and thought he was testing her, so she told him that that was not necessary since she was "a big girl." She said he asked her for a date on a subsequent evening and she consented to this, again out of fear. (RT 1868). Eventually he drove her to where her car was parked and let her out of his car.

The prosecution also presented the testimony of Betty Harrison and Jill McCue. These were the two girls that the defendant and Hummel had met earlier on the evening that they eventually murdered Mrs. Gums and with whom they had made a date for the following day, Easter Sunday.

On Easter Sunday morning, after Whitehorn and Hummel had murdered Mrs. Gums, disposed of her body and clothing and gone for a swim in the ocean, the two men showed up at Miss McCue's apartment where Miss Harrison had also spent the night. Whitehorn and Hummel spent several hours in the apartment, during which time the defendant went into a bedroom where Miss Harrison was lying down. While in the bedroom, Whitehorn kissed Miss Harrison several times, and then suddenly grabbed her and said he was going to rape her. He placed his hand inside of her capri pants and started to feel her, whereupon she screamed and Miss McCue came into the room. The girls told Whitehorn to leave, but he told them to "shut up and sit down". He then apologized for what had happened and said he would not have touched Miss Harrison for the world.

After the attempted attack on Miss Harrison, Miss McCue went into the bedroom and fell asleep. She awoke up to find Whitehorn massaging her back. He apologized again for what had happened. He then tried to kiss Miss McCue, but she objected and shoved him away and, after several more attempts Whitehorn finally got mad and left the apartment. When he was trying to kiss her he had his hands on Miss McCue's shoulders and was trying to push her down on the bed.

During the penalty trial, the prosecution also presented the testimony of three psychiatrists who had examined both Hummel and Whitehorn prior to trial.

Dr. Darryl D. Smith testified that after interviewing Hummel he felt that he was sane and that he was a good prospect for rehabilitation. Dr. Smith testified that he tried to interview Whitehorn, but that Whitehorn would not talk to him.



Dr. Karl O. Von Hagen also examined the two defendants prior to trial. He also felt that Hummel was sane and that he was susceptible to rehabilitation. As with the previous doctor, Whitehorn refused to discuss anything with Dr. Von Hagen. Based on observation, however, Dr. Von Hagen thought Whitehorn was probably sane.

A third psychiatrist, Brunon Bielinski, also examined the two defendants. He too felt that Hummel was sane and was potentially rehabilitative. Whitehorn would not talk to this doctor either, but the doctor felt, based on his visual examination of him, that Whitehorn was probably sane. He felt that Whitehorn was also probably rehabilitative. But he admitted that he had not had a complete background check or record of Whitehorn's past conduct.

#### DEFENSE PENALTY TESTIMONY:

The defendant presented the testimony of his sister, Donna Wiser. She testified that both the mother and father had mistreated both children when they were young, and that both parents were sexually promiscuous with other individuals. She also testified that Whitehorn's father was prone to administer severe corporal punishment to him when he misbehaved.

#### LEGAL HISTORY:

The defendant, Norman Arthur Whitehorn, along with his co-defendant, Charles Henry Hummel, was accused of the murder of Mrs. Angela Gums, in an information filed by the District Attorney of the County of Los Angeles on May 22, 1962. Whitehorn was also charged with having a prior felony conviction for kidnapping and rape.

He was arraigned on the information on May 25, 1962, and on June 1st both defendants entered pleas of "not guilty" and "not guilty by reason of insanity." Whitehorn also denied the alleged prior.

Trial by jury was begun on August 20, 1962. At that time, Whitehorn admitted the prior felony allegation and also withdrew his prior plea of "not guilty by reason of insanity."

On September 8, 1962, the jury returned a verdict of first degree murder against both defendants. (The jury deliberated for approximately 6 hours and 19 minutes.)

Trial on the issue of penalty was begun on September 20. At this time the co-defendant, Hummel also withdrew his "not guilty by reason of insanity plea." On September 24, 1962, the jury returned verdicts assessing the death penalty against Whitehorn and life imprisonment against Hummel. (The jury deliberated for approximately 4 hours and 18 minutes.)

On September 28, 1962, the Superior Court denied the defendant Whitehorn's motion to reduce the penalty from death to life and also denied his motion for a new trial. Sentence was thereupon imposed against him.

On August 5, 1963, the California Supreme Court, in an opinion written by Chief Justice Gibson, unanimously affirmed Whitehorn's conviction and sentence.

On September 16, 1963, the trial court set December 3, 1963, as Whitehorn's execution date.

To the best of my knowledge there are no legal proceedings pending at the present time, although in a recent conversation with Whitehorn's attorney, he informed me that he would probably petition the United States Supreme Court for a writ of certiorari and a stay of execution.

#### LEGAL QUESTIONS:

A full and complete review of the trial transcripts in this case fails to reveal any legal grounds justifying the exercise of executive clemency.

In a unanimous opinion of the Supreme Court, written by Chief Justice Gibson, they noted that the evidence against Whitehorn was clearly sufficient to demonstrate his guilt. Whitehorn urged, however, six major grounds for reversal based on alleged erroneous evidentiary rulings or instructions by the trial court to the jury.

1. The Supreme Court held that the trial court clearly and correctly instructed the jury that various statements made by the co-defendant, Hummel, to the police could only be used by the jury against him and not against the defendant. The court held that no error was committed against the defendant, Whitehorn in this regard.

2. The Supreme Court further held that evidence of the defendant's silence in the face of an accusatory statement made by the co-defendant, Hummel, to the police was properly received into evidence in view of the evasive nature of his responses, and that no prejudicial error was committed thereby. The Court further noted that the jury was correctly instructed on this subject by the trial court.

3. The defendant also complained that the trial court improperly admitted into evidence testimony concerning a prior rape committed by him in 1957. The Supreme Court noted that there were "striking similarities" between the prior offense and the present one, and they held that this evidence was properly admitted by the trial court.

4. The Supreme Court rejected the defendant's contention that the prosecuting attorney had improperly introduced into evidence, as a part of his case in rebuttal, certain evidence regarding this prior rape offense. The Supreme Court noted that this evidence only became material after the defendant had testified in his own behalf, and that it was properly admitted in order to impeach his testimony.

5. The defendant also alleged that the trial court had improperly stricken the testimony of a defense witness, Mrs. Stalew, which purportedly had relevance to the prior unchaste character of Mrs. Gums. The Supreme Court noted that the testimony was "of little, if any, evidentiary value", and they held that no prejudice was suffered by the defendant in this regard.

6. Finally, the Supreme Court held that the trial court had correctly rejected an erroneous instruction offered by the defendant on the question of whether it was necessary to have a causal connection between the rape and subsequent killing in order to bring the case under the felony murder rule. The Court noted that the trial court had correctly instructed the jury elsewhere on this subject, and that it did not appear reasonably probable that the giving of the requested instruction would have resulted in a different verdict for the defendant.

PRIOR CRIMINAL RECORD:

The defendant, Whitehorn, has one prior felony conviction, and several other arrests.

On December 6, 1957, Whitehorn was convicted in San Bernardino County of the felonies of rape by force and kidnapping of Linda Miller. He was sent to the state prison and paroled therefrom on June 6, 1961.

Prior to that, on October 27, 1955, the defendant was arrested and convicted for malicious mischief; as a result of this conviction he served thirty days in the county jail.

On May 27, 1957, he was arrested for battery on the complaint of his wife, but this charge was dismissed the following day at her request.

On November 14, 1961, subsequent to his release on parole, he was arrested for forcible rape by the Los Angeles police department. He was subsequently tried on this offense and was acquitted. The alleged victim was Jacqueline Adams, and the details of this crime are set out in the statement of facts.

A number of other assaults allegedly committed by the defendant, but for which he was not arrested, have previously been outlined in the statement of facts.

MENTAL CONDITION:

Whitehorn is not insane and he has an I.Q. of 103. He is in the upper range of the average intellectual category.

The Neuropsychiatric Committee at San Quentin characterizes Whitehorn as "a Passive-Aggressive Personality with Emotionally Unstable and Overcompensatory Sexual Aggressive Features."

The defendant recently took an electroencephalographic examination which showed a normal brain wave with generalized slowing and no breakdown.

As has previously been noted, the defendant Whitehorn initially entered a "not guilty by reason of insanity plea" but this was withdrawn by him prior to the commencement of the trial. The psychiatrists who examined him at that time reported that he refused to cooperate with them or to be interviewed by them, but they felt he was "probably sane."

SOCIAL EVALUATION:

The prison psychological evaluation notes that Whitehorn was friendly and cooperative during his interview, but that he seemed to function in a perfunctory manner.

The examiner noted that defendant's test pattern comes closest to resembling that of a delinquent or sociopath, but that he showed no evidence of bizarre thinking, psychotic process, or organic brain impairment.

One test indicated that defendant "is an extremely sociopathic individual with marked psychoneurotic symptoms and schizoid features. He is self-centered, immature, narcissistic and hostile."

BIOGRAPHICAL MATERIAL:

The defendant, Norman Arthur Whitehorn, presently 26 years old, was born in Denver, Colorado, on October 25, 1937. He is the older of two children; his sister is 23 and married to a well-to-do restaurant owner in Los Angeles. His father was a professional military man and his mother was primarily a housewife. The parents - particularly the mother - drank quite heavily and fought a great deal. They were divorced in 1945, when defendant was 9 years old, and both are now remarried to different persons.

Whitehorn married Margo Thuerer, on September 9, 1956, when both he and the girl were 19 years old. She divorced him in 1961; there were no children resulting from the marriage. The marriage was an extremely stormy one. He beat his wife on a number of occasions; and one time when she was four months pregnant, he hit her with an automobile and caused a miscarriage. On another occasion, in 1957, his wife had Whitehorn arrested for battery, but she subsequently dismissed the charges. Whitehorn states his wife was sexually promiscuous; but he also admits he had several girl friends while he was married.

He began school at age 6 and completed the 9th grade in high school at age 16 in 1953. He was not a particularly good student.

Whitehorn enlisted in the Air Force on October 27, 1954, and was discharged therefrom on December 10, 1957, "under other than honorable conditions." The discharge resulted from his conviction in San Bernardino Superior Court for the rape and kidnapping of Linda Miller. He had also previously had two special courts-martial convictions while in the Air Force.

He has worked as an aircraft mechanic, mechanic's helper, and dairy worker prior to his commitment to prison in 1957. After his release on parole in 1961, he worked at several jobs for short periods of time. His principal employment was in his brother-in-law's restaurant in Los Angeles.

Whitehorn was on parole at the time of this murder. He was received in prison in December, 1957, and released on parole on June 6, 1961. He did rather well in prison and apparently committed no disciplinary infractions. However, between the time of his release on parole in June, 1961, and the date of the murder in April, 1962, Whitehorn changed jobs and residences frequently; he was arrested, tried and acquitted for forcible rape; and he fought constantly with his sister and her husband who were trying to help him. He also consumed a great deal of alcoholic beverages. His full record on parole is enclosed elsewhere in this report.

Both Whitehorn and his co-defendant Hummel are active homosexuals.

#### MISCELLANEOUS COMMENTS:


The trial judge, the Honorable Allen T. Lynch, feels that this was an atrocious crime which was planned by Whitehorn. He feels Mrs. Gums was killed after she was raped because the defendant knew he would be returned to prison if his rape was discovered. The judge states he knows of no circumstances which would justify him recommending mitigation of the punishment.

The two deputy district attorneys who tried this case have listed in their letter to you the possible factors in aggravation and mitigation of the defendant's crime. One deputy feels that executive clemency should not be granted, and the second deputy respectfully declined to express an opinion either way. District Attorney William B. McKesson states he sees no reason for you to intervene in this case.

Sheriff Peter J. Pitchess states there are, in his opinion, no mitigating circumstances in this case, and his deputies who actually worked on the case share this opinion and feel Whitehorn is a dangerous man who is beyond rehabilitation.

Whitehorn's attorney, Charles V. Weedman, has handled this case from the very beginning. He feels that the defendant did not commit the actual murder of Mrs. Gums, and he should not therefore be executed. He also feels that since the co-defendant, who committed the actual murder, only receive a life sentence, the defendant should receive a similar sentence, except that it should be without possibility of any parole. He further states the defendant has shown great remorse for his crime.

The warden and prison personnel report that Whitehorn has not been a discipline problem while on condemned row.

  
John S. McInerney  
Clemency Secretary  
JSM:mcc

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 81: Materials Relating to the Clemency of Calvin Thomas  
(June 29, 1967)**

Sacramento, California  
Contact: Lyn Nofziger  
445-4571 6.29.67

FOR IMMEDIATE RELEASE

Sacramento--Governor Ronald Reagan today granted executive clemency to Calvin Thomas, and commuted his death sentence to life imprisonment without possibility of parole. Thomas had been convicted of first degree murder by a Los Angeles County jury in May, 1965.

Thomas had been involved in the fire bomb burning of his girl friend's home, in which fire her three-year-old son was killed. The incident climaxed a lengthy quarrel between Thomas and the girl friend, which had also involved several other residents of the neighborhood.

The Governor said clemency was granted because an electroencephalogram and psychiatric examination, conducted after Thomas was convicted, revealed preexisting brain damage resulting in a chronic mental condition.

The diagnosis was consistent with Thomas's pattern of behavior during the quarrel and commission of the crime.

Thomas has no other history of violent behavior.

In determining whether clemency should be granted, the Governor may consider all circumstances surrounding the case. He is not limited to matters presented at the time of trial or in subsequent legal proceedings.

Reagan emphasized that since the nature of Thomas's mental condition was not discovered until after the trial, the information was not available to the jury when it considered the penalty.

"On the basis of all factors surrounding the incident, and the mental condition of Thomas, a commutation of sentence is appropriate in this case, but Thomas should never be released on parole", he said.

An execution date for Thomas has been set by Los Angeles Superior Court for June 21. However, United States Supreme Court Justice William O. Douglas granted a stay of execution on June 13.

Reagan explained that he took the clemency action, despite the stay, because "All the questions presented to the United States Court have already been decided by the California Supreme Court, and there are no issues now pending in this appeal which are relevant to the clemency decision. Thus, since clemency is justified, there is no good reason for Thomas to linger on condemned row. Application for executive clemency submitted by Thomas had also been granted by the California Supreme Court, which concurred in the

TM/260



Thomas, Calvin

Sacto Union  
30 Jun 67

## Mental Condition

# Reagan Commutes Killer's Death Penalty

By MICHAEL O'CONNOR  
Sacramento Union Political Writer

Governor Reagan Thursday exercised his powers of executive clemency for the first time by averting the gas chamber death of a Los Angeles man convicted of killing a 3-year-old boy with a fire bomb.

Reagan's decision moved Calvin Thomas off Death Row where he had been since May 1965. It means Thomas will serve a life sentence without possibility of parole.

He had been scheduled to die in the San Quentin gas chamber on June 21 for conviction on a charge of tossing a homemade fire bomb into the home of his girl friend following an argument. Her son died in the fire.

Reagan said he granted the clemency because psychiatric examinations showed Thomas had pre-existing brain damage which resulted in a chronic mental condition. The tests were made after Thomas' conviction.

The clemency case was the third on which Reagan has acted during his first six months in office.

Earlier, he refused to grant clemency for Aaron Mitchell, convicted slayer of a Sacramento policeman, who was executed April 12. Mitchell became the first person to be executed in California in more than four years.

Reagan, later held a clemency hearing

for Nathan Eli, a San Diego man who murdered a housewife after entering her home on the pretext of being a vacuum cleaner salesman. Eli is still on death row following a stay of execution awarded by the U.S. Supreme Court.

Reagan's decision reduces to 58 the number of convicted murderers on death row.

A total of seven are scheduled for execution in the months of July and August. Only two, however, have appealed to Reagan for clemency. They are Edward Arguello and William Tahl, both of San Diego.

Arguello is scheduled to die July 11 and Tahl two days later.

The fate of Eli will not be known until October when the U.S. Supreme Court resumes case deliberation on a stay of execution.

Reagan said that since the nature of Thomas' mental condition was not discovered until after the trial the information was not available to the jury when it considered a penalty.

In deciding clemency, the governor may consider all circumstances in a case and is not limited to evidence submitted at a guilt or penalty trial.

"On the basis of all factors surrounding the incident, and the mental condition of Thomas, a commutation of sentence is appropriate in this case," Reagan said. However, he said Thomas should never be released on parole.

# Condemned Killer Spared by Reagan

## Governor Uses Commutation Power 1st Time

SACRAMENTO (UPI) — Gov. Reagan Thursday spared condemned murdered Calvin Thomas from the San Quentin gas chamber.

In his first use of the power to commute a death sentence, Reagan converted Thomas' penalty to life in prison without possibility of parole. Reagan had previously used his clemency powers to grant a stay of execution. But Thomas was the first man the governor permanently spared from death.

The governor said he granted clemency because psychiatric examinations showed Thomas was a victim of brain damage resulting in chronic mental condition.

### Jury Vote Death Sentence

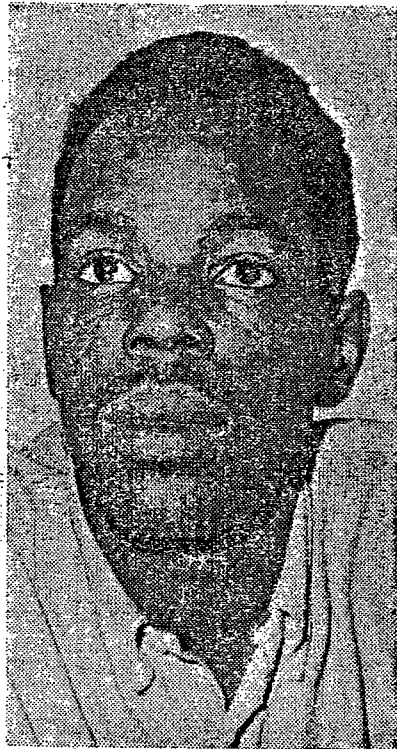
Thomas was sentenced to die by a Los Angeles jury in 1965 for the firebomb burning of his girlfriend's home which killed her 3-year-old son.

He had been scheduled to die June 1. However, U.S. Supreme Court Justice William O. Douglas granted him a stay of execution June 13. No new date with the gas chamber had been set.

There has been one execution since Reagan took office. Aaron Mitchell, convicted killer of a Sacramento police officer, went to his death in April, ending an unofficial four-year moratorium on the death penalty.

Reagan said the nature of Thomas' mental condition was not discovered until after his trial.

"On the basis of all factors surrounding the incident, and the mental condition of Thomas, a



Calvin Thomas

Times photo

commutation of sentence is appropriate in this case. But Thomas should never be released on parole," the governor said.

"Since clemency is justified, there is no good reason for Thomas to linger on condemned row," he added.

Attorney Carl B. Shapiro, representing Thomas, told a clemency hearing earlier this month that Thomas was an epileptic.

The attorney said the disease made Thomas hypersensitive.

He added, "It is true ... this man is a threat to society. Sick people are capable of violence."

Shapiro said the 27-year-old killer acted on an impulse when he threw a firebomb into the home of his girlfriend, Elizabeth Ector.

## Reagan Commutes Death Sentence Of Boy's Killer

The death sentence of Calvin Thomas, 27, of Los Angeles for murdering a child by throwing a fire bomb into his bedroom was commuted today by Gov. Ronald Reagan. The sentence was changed to life imprisonment without possibility of parole. Reagan granted his first commutation of a capital punishment case on the basis of psychiatric examinations and an electroencephalogram which indicated Thomas suffers from a mental condition resulting from a blow on the head.

The governor issued a statement declaring:

"A commutation of sentence is appropriate in this case but Thomas should never be released on parole."

Thomas had been convicted of throwing two fire bombs into the bedroom where Robert L. Ector, 3, was sleeping with a brother and sister. The arson-murder took place in 1965.

Thomas had been scheduled to die in the San Quentin gas chamber on June 21 but he was granted a stay of execution by

U.S. Supreme Court Justice William O. Douglas on June 13, two days prior to a clemency hearing conducted by Edwin Meese III, Reagan's clemency secretary.

At the hearing, Thomas's attorney raised the question of brain damage, saying the prisoner was a victim of epilepsy.

San Quentin Prison officials informed Thomas of the commutation shortly before the governor's office announced it in Sacramento.

He will be transferred tomorrow to the California Medical Facility at Vacaville.

His departure will leave 58 men on death row. The next scheduled execution is that of Edward Arguello who is to die July 11 for a San Diego murder.

Gov. Reagan  
Presiding: Ed Meese

CLEMENCY HEARING -- CALVIN THOMAS

Clemency Hearing Transcript  
Case of  
JUNE 14 Calvin Thomas  
Held: 6/14/67  
Granted Death → LWOP  
Commutation: 6/29/67

MR. MEESE: Mr. Thomas has requested that the hearing be scheduled and be held, and the Governor's Office has instructed any persons with interest in the case, to appear.

Present are four attorneys, Mr. Carlyle Mills, Mr. Carl Shapiro, Mr. Ted Lachelt, and Mr. Richard Pachtman. Mr. Mills, Mr. Shapiro, and Mr. Lachelt have been in communication with Mr. Thomas, but they are here with information concerning the case. Mr. Pachtman was the Deputy District Attorney who tried the case in Los Angeles County.

In regard to this case, in the matter of Mr. Calvin Thomas, he was convicted on the 11th of May, 1965 by a jury, for murder by means of arson. The judgment of the court was affirmed by the California Supreme Court on the 8th of February, 1967, and an execution date of the 21st of June had been set by a Judge in Superior Court, Los Angeles County. On the 12th of June, this week, this execution was stayed through Justice Douglas of the United States Supreme Court.

Although that matter is still pending, we have determined that the clemency hearing would be held today to continue the case as of this time, with the understanding with all the attorneys that additional hearings may follow.

As has been discussed with the other gentlemen, Mr. Pachtman; the general ground rules are, this is not a discussion of the legislative issue of capital punishment. It is information that would be of benefit to the Governor regarding the case of Mr. Thomas.

In addition, we have available an analysis of the trial transcript, a summary and review of the legal opinions. In the future, any subsequent legal proceedings. The entire background of Mr. Thomas as well as neuropsychiatric data.

The purpose of this hearing is to give any further information to the Governor, or emphasize any points any of you feel need more attention.

We'll start with Mr. Shapiro.

MR. SHAPIRO: I'm not speaking for Mr. Mills or Mr. Lachelt when I say some of the things I say. I'm speaking for myself as a person who has had some prior experience in clemency hearings and death cases.

We accept the principle that in a proper case, the Governor really and truly will exercise executive clemency. If we didn't accept that, we wouldn't be here. I'd like to say, I think this is a classic case for executive clemency. I've been to eight or ten hearings, and I've never seen a more classic case, in many regards.

Number one, if you take the background of Calvin Thomas. Here's a young man whose prior trouble with the law was really minimal in one respect. That<sup>it</sup> was a nonviolent crime to which he had pleaded guilty without even having an attorney present. He threw himself on the mercy of the United States Court for a nonviolent crime. I think this is important to distinguish between violent and nonviolent crimes. Is he likely to do it again? Is he likely to be a threat, because if he is not, this would weigh in his favor at such a hearing as this.

(drop) The charge was a charge of forgery, and he was in the service at the time. He could choose to place himself in the hands of the civil courts rather than the military courts, and rather than make this choice, he pleaded guilty. So that's the first thing as a background. His history--difficulties with the law is not such that would put him in a prejudicial position.

The other factor which I think is exceedingly important. I'd like to bring it out again. There was one important thing which unfortunately was not presented to the jury. You know that prior to being sentenced by Judge Parker, psychiatric examination was made by Dr. Thompson, and on the basis of an encephalograph, Dr. Thompson indicated that he had cerebral damage which had followed him from childhood. Now, unfortunately it wasn't presented to the jury. Had it been, it might very well have made a big difference in the case. Certainly it is now before us. This information, this medical information came after the case was over, or right before Judge Parker sentenced him.

At the present time, he is of course, now getting the best medical treatment anybody can get. The doctors give more constant attention to inmates than you and I get on the outside. For instance, Dr. Smith has told me, in the last month he has had seven encephalographs. The most recent was a week ago. Dr. David Smith has also told me that they have at the prison a sixteen channel encephalograph which is one of the best machines on the West Coast. He assures me that the prison evaluation completely corroborates Dr. Thompson's testimony in evidence that this man was mentally ill, and had had cerebral damage. Dr. Smith

describes it as epilepsy. In this connection, Dr. Smith told me something which I think is very interesting and has a bearing on this case.

Remember that obviously in some ways, crime of impulse is a crime of short duration in a way. It is a crime of flash, and not anything that--well, I'm not--I wasn't at the trial. Anyway, Dr. Smith has said that in prisons in California they have twice the rate of epileptics that they have outside. On the outside, maybe only one per cent of the people are, whereas in prison it would be two per cent. In Dr. Smith's words, they are hypersensitive. They have a tendency to violence which is a result, as far as anybody knows, is a result of pressure. Epileptics have it in varying degrees, and it is clear in the medical records of this case. This is a factor that has to be considered and given great weight. Given the proper medical treatment and proper medical care and control, it can be safely said that this is no longer a factor as far as future behavior is concerned, because epilepsy is now a disease which is controllable as far as symptoms are concerned. I'd say from my point of view, the very unfortunate fact is that the jury was not appraised of this, and it throws a greater burden on the Governor. These facts don't say that Thomas wasn't there. These facts help you understand the mechanics which led to this very unfortunate thing.

I think finally, in conclusion of what I have to say, the correspondence which you have had (pointing to Mr. Meese) and the other lawyers have had with Mr. Thomas, led you to the inescapable conclusion that Mr. Thomas feels contrite, badly

about it. He felt sorry and feels sorry today. It was an unfortunate thing. It isn't something he is proud of, and it was a very sad incident where an innocent person was the victim. In any event, there being an attitude of regret and the form of apology to so cite, which I think would be a fair conclusion, represents, I think, a step forward, and certainly is further grounds for giving close scrutiny to his petition.

MR. MEESE: (calls on Mr. Mills)

MR. MILLS: I'll second the thoughts of Mr. Shapiro on the mental illness of Mr. Thomas.

MR. MEESE: You represented him upon appointment of the court (drop)

MR. MILLS: Yes, my knowledge of the case relates to my scrutiny of the records, and extensive correspondence with Calvin Thomas, when I was representing him in that capacity. And also I have seen him on three separate occasions, on visits to San Quentin.

Primarily, from my scrutiny of the records, I concluded at the outset that there had been a definite (drop) The penalty was not called for by the facts of the case. I concluded on the basis of my professional opinion--I felt that he was not adequately represented by counsel. The Public Defender's office assigned counsel to him, and I don't feel that either his defense relative to his mental illness were brought out at the trial, nor were his legal defenses actually protected.

Forinstance, I can't concede any defense attorney allowing a full confession of the crime to go to the jury without objections. There are procedures in the law, and I can't

conceive of any attorney who would--who is really defending his client as he should, allowing such a confession to go to the jury without having a preliminary hearing.

MR. MEESE: I believe the admissibility of the confession (drop) were matters considered by the California Supreme Court, while I'm not disputing your feelings of the defense, they did uphold this (drop)

MR. MILLS: However, the point that I was making, is that the attorney did not attempt to exclude (?) this evidence. And I think that any attorney defending a person properly, should do everything properly.

On this same question of legal representation at his trial, the fact that the defense counsel made no opening statement and did not make a closing argument to the jury, is also important. The defense, as I understand it, to the extent that it was a defense, was diminished responsibility. That is, the facts may have been so, but because of extenuating circumstances, the crime should have been considered as not as serious as it would if it had been intentionally committed. This is rather technical which requires explanation to the jury.

There are a number of things where he could have done a better job in my opinion. Calvin Thomas didn't help himself at the trial either. I think Mr. Pachtman will confirm this. He probably gave the jury a very bad impression of himself. Primarily, because he was dissatisfied with his defense counsel. He made three motions before the trial to have other counsel appointed for him. I can see this antagonism between the defense counsel and Thomas, at the trial. This undoubtedly



was communicated to the jury. They are there and see these things. They can reason.

Also, I think that the prosecutor took unfair advantage of this situation. He realized that he had a person that was not a very attractive one personality wise. He criticized him to the jury as a nit picker and (drop) And trying to get the jury to punish him for them, I think is an improper case, and it leans to the sort of punishment we have here of possibly the jury saying, "We don't like this fellow, so we're going to give him all we can." That's not a proper attitude in a court of law and I don't think the prosecutor was entitled to make those statements. But it could have influenced the jury improperly.

MR. MEESE: Didn't the court have an extensive whether or not he was truly sorry for what he did. I think they set this out, the whole conversation in great length--the whole position they took saying this was not proper conduct. (Dropped most of what you actually said, trying to catch up with Mr. Mills.)

MR. MILLS: Such things can influence a jury. There's no question about it, and when we are considering mercy for this man I think this should be considered. Whether they were legally, improperly influenced.

My scrutiny of the record indicates to me that this act was an unfortunate incident that resulted from something that was not intended. The intention, I think, was directed toward a minor crime. Malicious mischief was, I think, all that Calvin Thomas was guilty of. He and a group of teen-agers wanted to get some people out of a house and used a movie and T.V. incident to get them out. A fire was what they used to do

it. That's the standard television solution for this particular problem, and in that connection the record shows in the background, television is important to these people. There are more than half a dozen references in the trial transcript as to television being on and influencing these people.

Elizabeth's children were watching T.V., Calvin Thomas said he was watching T.V. during the afternoon. It was something in the background of these people all throughout the incident, and when you consider the mentality of these people it's not too surprising that they would resort to this procedure for getting these people outside a building. Something like that, of a psychological nature where you considered this man of very limited education--I believe the extent of his education was up to the ninth grade, and from the testimony of these witnesses you can tell their mentality is low, their education is very poor. They were influenced. I think the biggest influence in the whole case was this gang of teen-agers. Ruby Richardson and her friends. Tension that built up between Elizabeth and Calvin Thomas over a period of days. He was undoubtedly frustrated, and his prior hurt when Elizabeth threw him out of the house and took up with another man, and they culminated when Ruby Richardson somehow got the idea.

Calvin Thomas was going to be attacked and ~~gathered~~ this group of teen-agers ~~gathered~~ gathered around Thomas, and tension kept building up and building up. I think the whole key to this case was these teen-agers who built everything up for Calvin Thomas so far as mental illness was concerned. I don't think he had any intention at any time to actually hurt anything or anybody.

MR. MEESE: As I remember, there had been sporadic arguing going on from time to time on the day of this occurrence including hot water had been thrown on Mr. Thomas. (drop)

MR. MILLS: Yes. In that connection, I might mention something I consider significant. He was attacked by Elizabeth and his reaction was a law abiding one. He called the police and the police came and talked to Elizabeth and tried to cool her off. His reaction was a good one.

It was also brought out at the trial that he had cooperated with the prosecution as to another crime. He had been a witness for the prosecution in establishing the crime against someone else.

MR. MEESE: That is unrelated.

MR. MILLS: Yes. But it shows his attitude to law and order. He didn't resist when he was arrested, and there certainly is nothing in his background to indicate that he is a hardened criminal. No background of crime. This is an isolated incident in his whole life.

MR. MEESE: (calls on Mr. Lachelt)

MR. LACHELT: Just two or three things, Mr. Meese. First, I appreciate your request or invitation that I attend today because I have only known Mr. Calvin Thomas for six days. I have spent some time with him at San Quentin and tried to read the voluminous record that confronts us all. Mr. Mills knows more but I want to convey two or three things to you.

I stopped at San Quentin this morning and talked with Calvin Thomas because I thought he should have a chance to bring up anything he would want mentioned today.

Firstly, it is difficult for him mentally, to express remorse in ways that are recognizable by others. I think anyone who has dealt with people of this type, would all agree that such persons find it difficult to express that which we all like to see from a person condemned to murder. But I would say he was extremely contrite. He expressed a great deal of remorse to me when he talked of this three year old boy.

Secondly, the reason I'm here today is because I believe a person deemed mentally ill at the time of judgment couldn't have a voice to speak up today, because I doubt that his mental state would have improved.

As far as his epilepsy goes, Dr. Smith's findings are the same--support Dr. Thompson's. I think the proper place to come to raise that point is to the Governor.

Thirdly, I think that the defendant's conduct during the course of the trial--I understood at one time he even threw a transcript at his court appointed counsel, because he was unhappy with his counsel's failure to cross-examine some witnesses.

MR. MEESE: I think he actually slapped some papers down on the table. Mr. Pachtman, do you remember the incident?

MR. PACHTMAN: I don't.

MR. LACHELT: Impulsivity is the way of life of this type of person. People subscribe to such persons a continuing hostility but it is often not the case. Just, persons with this type of epilepsy can not control themselves to the extent that normal persons do.

Touching briefly on Mr. Mills' statement here, this seems to me to be a prime example of a type of case wherein a

person with diminished capacity might very well have received a life sentence rather than death. No opening statement was made and no closing statement was made, so it's difficult to see how any jury could be appraised of the state of proceedings.

MR. MEESE: There was argument made-- (drop)

MR. LACHELT: I'm speaking of the guilt phase.

MR. MEESE: I think it should be pointed out in fairness to the counsel that this was a plan and was not negative on the part of counsel. Counsel for the defendant looked into this aspect of it and was concerned because of the total circumstances of the case, that if there were psychiatric examinations, that this would come into evidence and could be used at that time. I'm not arguing with you on the point, but I want to point this out in fairness to the counsel that tried the case. I'm not arguing with your ultimate conclusion as to what should or shouldn't have been presented, but I think we should be fair.

MR. LACHELT: I expressly asked Calvin Thomas how much difficulty he gave his counsel and he said he layed it out to him as clearly as he could. That was the beginning, I think, of the defendants disquiet as far as counsel was concerned. His failure to raise the point of his childhood. Rightly or wrongly, that was the beginning of the difficulty.

MR. MEESE: Mr. Pachtman, I'm familiar with the transcript of the trial, but would be happy to have any particular points you would like to make.

MR. PACHTMAN: I'll try not to go into some things that were made evident at the trial, but I don't think it is

avoidable. No one likes to see anyone executed. I certainly feel that way, but I believe as time passes, the memory sort of dims and the facts, the crucial facts of the case become obscured; and I'm afraid some of the crucial facts of this case have been obscured.

I've tried several cases with Mr. Moore and I think he is an outstanding counsel. I never get along with him in court. I think he is an outstanding attorney and he has beefed me on certain things. I think he is an outstanding attorney, and I don't think it's fair to try to fault him for what he did at the trial.

I think it is a clear cut first degree murder case, and Mr. Moore clearly saw that. And one of the tactics he did use, was to make his argument more effective at the penalty phase, and did not argue at the guilt phase. I thought that was an outstanding tactic that he did use, so the jurors would pay more attention to him later.

I heard Mr. Mills say Mr. Thomas was caught up in this game, and so on. And then we get to some of the facts that people may be glossing over. Mr. Thomas did get them out of the house, and at that time had fire bombs available to him; and when he came back he saw there was no buying (???) with Elizabeth and the man she was with. I don't see where this was any game whatsoever.

Now, the second point here is, he knew that this was a room that was used as a bedroom for not just one child, but for three children. He knew that because he made that room. It was a 5 by 7 room and the bed was a 3 and a half foot by 5 foot (???) and if he was trying to frighten somebody to leave

that house, he knew exactly where Elizabeth and her paramour were sleeping. He knew where the window was, and that there was another window in the dining room, but it's very significant that he chose to throw that bomb through what is a bedroom where he knew minor children slept; and I don't see how you can ignore that.

Three. Another fact that you can't ignore is that he made the statement a couple of times during the day, that he was going to get even with Elizabeth. He also said he was going to get even, even if he had to ~~kill~~ one of the children. So another fact that I believe is possibly ignored here--we are talking about the mental state of Mr. Thomas.

One thing that's ignored is that he was acting in consort with another individual. What was the other individual's mental state then? This indicates previous discussion. Something was going between the two of them that they had worked out, and Mr. Shapiro says it was a flash type of crime. I don't think it really was. First of all, they had gathered the bottles, they had gone to a gas station and purchased the gasoline, and then made eight or nine fire bombs. All of this takes time, so I don't think it is a flash crime.

Mr. Shapiro pointed out something about mental illness. Mental illness can mean all things to all people, and psychiatrists aren't going to define what they mean by mental illness. When I read Dr. Thompson's report, the likelihood of a man to commit a crime again. . . (reads report)

This is the type of a man that society has to be protected against at times. He just reacts in such a way that he

is a danger and a threat to society. When we talk about mental illness, one of the things that I always think about; if a man is really so mentally ill, what would he have been likely to do if a police officer would have been standing right at his side. I believe there is evidence establishing in this case, when Calvin Thomas was told police cars were in the area, he hid the fire bombs in a garbage can and covered them up, and when the danger of the police was gone, that's when the fire bombs were taken out.

Also, some of the fire bombs were dumped in a small space that was hardly wide enough for anybody to walk in, between a fence and one of the walls of the house. That takes a state of mind, and I don't think the man is too mentally ill when (drop).

Calvin Thomas is the one who stated, "Let's cut the phone wires so no one can call the police. What would the man do with a police officer standing right along beside him? He has demonstrated this.

Another fact, is that he also ran from the scene. That is something that should certainly be considered by the Governor.

The defendant is sorry today. I can understand why he is sorry today, because now he is facing the death penalty; but at the time of that trial he didn't exhibit any type of sorriness or contriteness, and this is something that concerns me.

I think he may be a threat to society. Not that I want to see anybody executed but I think society has a right



to be protected.

MR. MEESE: I might say, as a matter of general information, the man who would have been a codefendant was hit by a truck and killed prior to being apprehended, and that's why there is no codefendant in the case.

MR. SHAPIRO: I can see why Mr. Pachtman (drop) because he has a capacity to present things in their worst form.

The thing you have to decide, is the death penalty the proper conclusion for a diseased mind?<sup>2</sup> The fact is that Dr. Thompson and the prison neurologist and psychologist have pretty much agreed that this man is pretty much mentally ill. But whatever it means to these doctors, it means one thing, and that is that it was a factor that led in whole or in part to the commission of this crime.

It is true that this man is a threat to society in the sense which you suffer fear, namely that sick people are capable of violence; mentally ill people are capable of doing things which well people do not do. On the other hand, this is the reason for executive clemency, because we are not trying to punish them for being mentally ill. We are trying to protect society.

Is this man so antisocial, so pathological asocial that he doesn't respect life, and for that reason I would submit that the issue of mental illness or cerebral damage, epilepsy or whatever you want to call it, is one of the prime questions which we want to bring to the Governor's attention; because it explains something which otherwise you have an awfully hard time understanding. Why does a young man, I think he was twenty-four, had a life without a history of violence. He

is just a person like you or I, suddenly doing something that is hard to understand. It shocks me that anybody would throw a gasoline bomb into a room where a child is sleeping. It shocks everybody, but how do we account for it if you don't accept the diagnosis of the doctors. You are faced with the conclusion that this is a person who suddenly becomes so anti-social that he didn't respect life or liberty, and I don't think this is fair.

The people of the State of California have consistently rejected legislative moves to repeal the death penalty and the reason is to protect us from pathological people who are so antisocial, who have so little respect for their life or my life, or anybody's life, that they are going out and take life and take it for their own purposes. I would submit-- I really again say, I think this is a classic case of a young man who had an exceedingly serious couple of days which destroyed the life of a child, and perhaps the happiness of a family, and it was something which clearly was a crime that could not be condoned, but it can be understood.

MR. PACHTMAN: I don't want to beat the dead dog to death, but I would say with regards to the subject, psychiatrists, I think they are principally involved in efforts to help their clients. That would permeate their whole opinion when the future of their patient is involved, and this type of help must carry over when they recognize what the client is facing.

MR. MILLS: Just before this thing happened, Elizabeth testified that she looked out of the window and saw Calvin

Thomas walking past, and it is a fair inference that he saw her. If he wanted to carry out his threats, why didn't he throw the fire bomb in the place where he was. There was a lighted room where the children were and where she was. If he intended the fire bomb where the people were, not to a place where presumably there was nobody because it was dark.

MR. MEESE: Mrs. Autry Davis testified that Calvin Thomas (reading from transcript)

MR. MILLS: This testimony is totally unbelievable.

MR. MEESE: This was a part of the testimony during the trial.

MR. PACHTMAN: As a deaf person, I can tell you, people tend to talk so much louder under those circumstances, and that's exactly what happened here. You will note that she said in cross examination, she said he was talking in a normal voice. That is it. He was screaming it at Elizabeth. (drop)

MR. MILLS: Several persons were present who testified they never heard such a statement.

MR. MEESE: I think the record speaks for itself.

MR. MILLS: So far as the testimony is concerned, he threatened to fix her face; he didn't fix her face. And the telephone wires weren't cut. And that's the background.

MR. LACHELT: I share great confidence in the Correctional Department of California. Mr. Pachtman has stated that he fears this man as a danger if not executed. Well, the only society he would be in, is that of a guarded, closely confined situation. Epilepsy has lent itself to treatment by drugs

and it is my understanding that he has not accosted anyone since he has been in death row. He will not be a danger as he would be in close confinement.

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**Exhibit 82: Western Union Telegram Notification of Traumatic Brain  
Injury, January 20, 1965**

## CLASS OF SERVICE

This is a fast message unless its deferred character is indicated by the proper symbol.

# WESTERN UNION TELEGRAM

W. P. MARSHALL, PRESIDENT

SF-1201 (4-60)

## SYMBOLS

DL = Day Letter

NL = Night Letter

LT = International  
Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

928P ~~CST~~ JAN 20 65 SC565 MB573

M LLA401 GOVT PD BDL TDM PWS DULUTH INTL APRT MINN 20 912P CST 6-6-65

MRS LILLIAN A BEARDSLEE

5528 WALSH ST STL (REPORT DELIVERY)

(PRIORITY)

I WISH TO OFFICIALLY INFORM YOU THAT YOUR SON, AIRMAN  
THIRD CLASS DONALD J BEARDSLEE, HAS BEEN VERY SERIOUSLY ILL  
SINCE 20 JANUARY 1965 AS RESULT OF INJURIES RECEIVED FROM A  
FALLEN TREE. HE IS PRESENTLY IN ST LUKES HOSPITAL, DULUTH,  
MINNESOTA. RECOVERY IS QUESTINABLE. ATTENDING PHYSICIAN RELATES  
THAT PRESENCE AT BEDSIDE WOULD BE BENEFICIAL TO THE PATIENT.  
PROGRESS REPORTS WILL BE FORWARDED TO YOU EVERY FIVE DAYS UNLESS  
A SIGNIFICANT CHANGE IN CONDITION OCCURS, IN WHICH CASE THEY  
WILL BE SUBMITTED IMMEDIATELY. PLEASE ACCEPT MY SINCERE SYMPATHY  
DURING THIS TIME OF ANXIETY

HOWARD S DERR LTCOL USAF COMMANDER 343 CMBT SPT SQ DULUTH INTL APRT MINN